



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: February 5, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

SUBJECT: Soil and Water Conservation, Amending Ch. ATCP 50, WI Admin. Code
(Hearing Draft Rule)

PRESENTED BY: Agricultural Resource Management Division

REQUESTED ACTION:

At the February 19, 2013, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) revising ch. ATCP 50, related to soil and water resource management.

SUMMARY:

Background

ATCP 50 is being revised primarily to implement the new and modified farm runoff control standards adopted by the DNR in 2011. These new and modified DNR standards (referred to as "2011 DNR standards") require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (TMDL). Under state law, DATCP is responsible for developing conservation practices and other components necessary to implement performance standards for farms. In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing.

Other changes in the rule are designed to improve administration of the Soil and Water Resource Management (SWRM) program, including grants management, cost-sharing and establishing qualifications of engineering practitioners certified under the program.

Rule Content

Among other things, this rule will:

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- Update the farm conservation standards in subch. II of ch. ATCP 50, and related definitions, including updates to the RUSLE 2 definition.
- Define a method for determining the distance between 5 and 20 feet for a tillage setback.
- Revise the soil erosion control standard to include pastures.
- Modify nutrient management planning requirements for pastures, including a phase-in process to address high risk areas.
- Clarify the conservation compliance requirements for the farmland preservation program, including a phase-in of the farm runoff standards updated in ch. NR 151.
- Simplify the manner by which engineering practitioners are certified.
- Update the technical and other standards for practices cost-shared with state funds.
- Better support implementation of performance standards on farms.

The following provides more detailed analysis by subchapter.

Soil and Water Conservation on Farms

Farm Conservation Practices

To implement the 2011 DNR standards, this rule modifies the farm conservation practices as follows:

- *Soil Erosion Control.* This rule requires farmers to manage pastures as well as cropland so that soil erosion rates do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 2 to 5 tons of soil loss per acre per year. The rule also clarifies how soil erosion is calculated in the case of wind erosion. The RUSLE 2 equation, as defined in the rule, must be used to measure sheet and rill erosion and NRCS Wind Erosion Prediction System (WEPS) model to measure wind erosion.
- *Nutrient Management and Phosphorus Index.* This rule clarifies the process for annual review of all nutrient management plans to ensure that updates are prepared when needed. It also defines how nutrient management planning will be implemented for pastures by expanding the nutrient management standard to include pastures, and establishes a phase-in period for implementation. Within three years of the effective date of the rule revision, nutrient management plans are required in high risks areas. By 2020, all pastures must have nutrient management plans subject to cost-share requirements. To facilitate implementation of the Phosphorus Index, this rule references the most current tool for calculating soil loss, RUSLE 2.
- *Tillage Setback.* This rule defines the method for calculating a setback over 5 feet but less than or equal to 20 feet.
- *Process Wastewater.* This rule implements this new performance standard by adding a standard for cost-sharing in subch. VIII.

Subject to the cost-share requirements in this rule, which remain unchanged, landowners must implement these new farm conservation practices to achieve compliance with the 2011 DNR standards. As part of this rule revision, however, DATCP plans to phase-in compliance with the 2011 DNR standards for landowners who claim Farmland Preservation Program (FPP) tax credits. This phase-in will enable farmers to plan in advance for necessary changes in conservation practices on their farms, and allow an orderly transition for counties from a system focused on implementation of the original performance standards (adopted by DNR in 2002) to the new standards (adopted by DNR in 2011).

This rule continues to allow farmers to choose the best way to comply with this rule. A farmer may choose between conservation practices that are appropriate for his or her farm, as long as those practices achieve compliance. In creating a cost-share standard for feed storage runoff control systems, this rule includes a note that explains the options to address a feed storage discharge, pointing out that farmers' choices may be affected by whether they receive state and other cost-sharing funds intended to achieve long-term prevention and other conservation objectives. Farmers continue to have access to a range of resources such as DATCP, University of Wisconsin-Extension, Natural Resources Conservation Services (NRCS) and the county land and water conservation departments to secure technical assistance.

Cost-Sharing Required

DATCP has not changed the requirement for cost-sharing availability when a landowner is required to install conservation practices that change "existing" agricultural facilities or practices. However, the DNR rule revision in 2011 changed the definition of "existing" and "new" agricultural facilities and practices for cost-share purposes. DNR's rule did make changes in cost-sharing requirements in certain cases where landowners must close unused manure storage structures. This rule changes the cost-sharing provisions for landowners installing conservation practices in non-farm settings.

County Soil and Water Conservation Programs

Farmland Preservation; Conservation Standards

In addition to addressing 2011 DNR standards, this rule incorporates the changes to the conservation compliance requirements for FPP to reflect the passage of the Working Lands Initiative in 2009 Act 28, the state's 2009-2011 biennial budget (codified primarily in ch. 91, Stats.). The key changes are as follows:

- This rule ensures that a farmer's eligibility is based on meeting state conservation standards that mirror DNR performance standards and prohibitions, except that this rule phases in implementation of the 2011 DNR standards for FPP participants, making them fully effective as of 2016.
- Landowners with pre-2009 agreements are only required to meet the conservation requirements specified in their agreements, as under prior laws.

- The concept of compliance is defined. Landowners must comply with state standards on the farm, as defined in this rule. Landowners can remain in compliance with the nutrient management standard when they add or convert land as long they update their plans in a timely manner. To streamline county recordkeeping for DATCP monitoring purposes, the rule establishes minimum requirements for documenting county compliance determinations.
- Landowners may continue to claim tax credits if they enter into performance schedules (previously "compliance schedules") with the county and make reasonable progress in implementing farm conservation practices identified in the schedule. Schedules may provide landowners with as many as five years to achieve compliance.
- Counties have expanded responsibilities related to compliance monitoring, including more detailed standards for entering into performance schedules with farmers. County authority is clarified to include farm inspections. Counties must review a farmer's compliance at least once every 4 years, not 6 years as previously required.
- Counties must issue certificates of compliance to enable farmers to fulfill the documentation requirements in the tax law, and may issue certificates to create a record of compliance.
- As in the past, a county may issue a notice of noncompliance if it finds that a program participant is not complying. Now counties have the option to issue a notice if the landowner wishes to "refrain from collecting a tax credit," in addition to notices issued based on a failure to meet program requirements. This rule explains the need for counties to exercise sound judgment in handling of critical aspects related to monitoring conservation compliance on farms, including treatment of non-compliance and the issuance of notices of non-compliance.

Grants to Counties

Currently, DATCP must follow an annual allocation process to award grants to counties, including extensive procedures for revising the allocation plan. Allocation decisions are made according to priorities and other criteria, which are slightly changed by this rule to place greater emphasis on statewide priorities. This rule also simplifies the process for revising the allocation plan related to transfers and reallocations as noted below.

Annual Staffing Grants to Counties

This rule codifies a past decision by DATCP to waive the minimum staffing grant of \$85,000 per county, ensuring that DATCP funding is used to support the county's actual costs for staff. To ensure that counties spend most of their allocation on staffing costs, this rule caps reimbursements for support costs. This rule also modifies the criteria DATCP uses to set priorities for making grant awards. Reflecting the end of the priority watershed program, obsolete procedures and references to that program have been removed.

Grants for Conservation Practices

This rule codifies a past decision by DATCP (through a rule waiver) to reinstate cost-sharing to resolve notices of discharge and notices of intent issued by DNR for discharges from livestock operations. It also formalizes procedures for the voluntary transfer of cost-share funds between two counties, or the award of grants from a reserve established in the original allocation plan. In regard to requests for extensions of projects, this rule simplifies the process for making requests and allows DATCP to accept requests for extensions received before February 15 of the subsequent grant year if good cause is demonstrated. Consistent with waivers issued by DATCP, this rule allows extended cost-share funds to be pooled and used for any extended project in the county, and also allows non-county project cooperators to request a one year extension to spend their grant funds.

Cost-Share Grants to Landowners

This rule makes changes to support improved compliance with farm conservation practices by focusing the use of cost-share funds. Specifically, it excludes use of cost-sharing on land owned by state and local governments, and limits cost-sharing for certain practices that are not required to implement performance standards and prohibitions on farms, and clarifies that economic hardship is not available to non-farm landowners.

It also adds details to the procedures for recording cost-share contracts, including the timing for recording, the use of department grant funds to cover recording costs, and elimination of the requirement to record contracts involving nutrient management and other soft practices.

Soil and Water Professionals

Conservation Engineering Practitioners

Under s. 92.18, Stats., the department is directed to establish, to the extent possible, requirements for certification in conformance with the federal engineering approval system. This rule creates a more flexible and responsive framework for certifying engineering practitioners that better matches the federal system, and ultimately ensures maximum capacity for design and installation of farm and other conservation practices. In place of a list of practices prescribed by rule, this rule allows DATCP to grant certification for any practice authorized by NRCS and DNR as long as DATCP follows a public process specified in the rule to modify the list of practices for which certification may be provided. Less complicated than a rule revision, this new process allows for public review and comment before DATCP changes the certification standards and the related form.

To improve coordination of the evaluation and rating of applicants, this rule allows DATCP to designate a state conservation engineer, to function similarly to the NRCS state engineer. Under this revamped framework, certification will likely include non-agricultural practices, and accordingly the certification designation has been changed from "agricultural" to "conservation" engineering practitioner.

This rule also imposes restrictions on the use of this certification authority to sign engineering documents, thus preventing one person from certifying all facets of a project including design, review and approval.

Nutrient Management Planners

This rule recognizes that DATCP may develop minimum standards for department-approved training courses for farmers who develop their own nutrient management plans.

County and Local Ordinances

This rule adds provisions to ensure compliance with the requirements of the livestock facility siting law (siting law). See s. 93.90, Stats., and ch. ATCP 51, Wis. Admin. Code. It makes clear that counties can enforce water quality standards in a siting permit even if cost-sharing is not provided. Consistent with the siting law, a county cannot require a permit under its manure storage ordinance if it also requires a facility to obtain a permit under a siting ordinance.

The standards for manure storage ordinances have been updated to reflect changes in the management of manure, including the use of storage for non-manure wastes such as feed leachate and milking center waste, and revisions of applicable technical standards to reflect those changes.

Regarding more stringent local regulation, this rule describes requirements imposed under the siting law to implement local ordinances with these additional provisions.

Standards for Cost-Shared Practices

This rule adds these general provisions that apply to all cost-shared practices:

- Expansion of the concept of voluntary use of updated technical standards, an option first adopted in ATCP 50 in 2007 in connection with the nutrient management performance standard. Under this procedure, a landowner or grant recipient may agree to use updated NRCS or DNR standards as a part of cost-shared project if certain conditions are satisfied (e.g. the newer standard is at least as protective of the environment as the referenced standard).
- A process that allows DATCP to require advance approval of a practice design in special cases before any county can receive a cost-share reimbursement for installation of the practice.

In addition to updating NRCS and other technical standards incorporated into this subchapter, this rule:

- Creates a standard for cost-sharing systems to control discharges of feed storage leachate to complement the cost-share standard to address discharges of milkhouse wastewater (see s. ATCP 50.77).
- Clarifies the responsibility of a landowner to maintain the storage capacity of the original storage facility cost-shared by DATCP, if animal units are added during the maintenance period of the manure storage cost-share contract.
- Recognizes the use of a limited set of practices such as access roads and streambank and shoreline protection in non-farm contexts, but imposes restrictions to prevent misuse of limited state cost-share funds (e.g. access roads cannot be used to pay for road building for public use).
- Separates cattle crossings from access roads as a cost-shareable practice and creates a new standard for "stream crossing."
- Eliminates heavy use area protection as a separate cost-shareable practice and allows this practice only as a component of other practices such as barnyard runoff control systems.
- Provides more flexibility to cost-share pesticide spill control structures without the requirement of a pesticide management plan in all cases.
- Better defines structural and bioengineering treatments that are cost-shareable under streambank or shoreline protection and makes other changes to the standard.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general to incorporate the following standards by reference in this rule:

- NRCS technical guide standards and related documentation.
- ASCE and other private sector-developed engineering practice standards.
- State agency (DNR, DOT) erosion control standards for construction sites and stormwater management.
- UW-Extension publications including milking center waste water management, rotational grazing, and soil and manure testing.
- NRCS standards for determining soil erosion (RUSLE 2, WEPS).

Copies of these standards will be on file with DATCP and the legislative reference bureau. DATCP has discontinued the practice of including key documents as appendices and will utilize its website to indicate where documents may be obtained.

Waivers

DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Land and Water Conservation Board

The land and water conservation board has reviewed this rule as required by s. 92.04 (3) (a), Stats.

Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations

NRCS has adopted standards for conservation practices cost-shared by NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices cost-shared with DATCP funds. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent on cost-sharing (there are limited exceptions).

While NRCS sets national standards, standards vary, to some extent, between states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin's soil and water conservation program, DATCP may incorporate NRCS standards as written or may modify the standards as appropriate. This rule will modify current DATCP rules that incorporate NRCS standards by reference. This rule may incorporate updated NRCS standards, or may modify NRCS standards to make them more clear or workable in Wisconsin's soil and water conservation program. It will allow landowners receiving cost-sharing to voluntarily take advantage of new NRCS standards not yet incorporated into rule, thereby ensuring that they get the most value for their investment in practices.

NRCS certifies engineering practitioners who design, install or approve conservation engineering practices cost-shared by NRCS. DATCP certifies practitioners who perform similar functions under DATCP rules. As noted above, this rule makes changes to better match the state and federal programs, which ultimately will benefit the landowners who rely on technical services from engineering practitioners.

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program (EQIP) is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and other conservation practices. As a result of confidentiality requirements, federal cost-sharing provided to landowners through this and other NRCS cost-share programs cannot be publicly disclosed. Without accurate historical data about past use of NRCS cost-sharing to implement state conservation standards, it is difficult to account for the role these funds may play in the future.

Other programs, such as the Conservation Reserve Program (CRP) and the Conservation Reserve Enhancement Program (CREP) also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state programs for conservation funding with relevant federal programs.

Comparison with Rule in Adjacent States

This comparison examines how surrounding states are addressing issues related to the 2011 DNR standards, with particular focus on the implementation of such standards through farmland preservation activities. In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the phosphorus index in some form but none use it in the same manner as ch. NR 151 provides. For example, phosphorus management strategies in Michigan are implemented as part of the state's Generally Accepted Agricultural and Management Practices (GAAMPs). Wisconsin's approach differs from the programs in adjacent states in that it has more detail in its phosphorus index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost-sharing must be made available to existing agricultural operations before the state may require compliance with the standards. Cost-sharing is often tied to compliance responsibilities in adjacent states, but there are instances where farmers must meet standards other than the phosphorus index as part of regulatory programs.

Illinois

Using a different framework and programming, Illinois implements several standards similar to those adopted in Wisconsin. In addition to implementing a phosphorus index for large livestock operations, Illinois encourages the equivalent of a tillage setback for croplands through a property tax incentive related to the construction of livestock waste management facilities. This incentive applies to the installation of vegetative filter strips in cropland that is surrounding a surface-water or groundwater conduit. Illinois law does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state.

While Illinois has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Iowa

Like Illinois, Iowa requires that nutrient management plans for livestock operations of 500 or more animal units be based on the phosphorus index. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharges to waters of the state, polluting waters of the state and discharge to road ditches. Medium-sized livestock operations are required to install runoff controls to eliminate discharges of process wastewater into waters of the state. See Iowa's website at:

http://www.iowadnr.gov/portals/idnr/uploads/afo/fs_desncriteria_medcafo.pdf

While Iowa operates a county-based statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Michigan

Michigan relies on GAAMPs [see *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* (January 2012)] to support the Michigan Agriculture Environmental Assurance Program (MAEAP), which includes a compliance verification process that ensures nuisance protection to farmers under Michigan's Right to Farm law. GAAMPs covers standards similar to those in Wisconsin including standards for process wastewater and pasture management. These standards are implemented as part of the state's right to farm law and its complaint investigation program. The state assesses problems identified through complaints, and farmers must take corrective action to earn nuisance protection under the right to farm law.

Michigan does not require a separation distance between tillage activities and waterbodies. The state's regulatory requirements regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

While Michigan has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements

Minnesota

Minnesota implements a variation of a tillage setback in limited settings, requiring a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD5 (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD5. State and local officials work with pasture owners to prevent and abate water quality violations (Minn. R. ch. 7050 and 7060) that may be created by sediment or nutrient runoff from poorly managed pastures.

Under its feedlot program, Minnesota imposes mandatory requirements on about 25,000 registered feedlots. This program requires feedlot owners, ranging in size from small farms to large-scale commercial livestock operations, to "register with the MPCA, and meet the requirements for runoff discharge, manure application and storage, and processed wastewater."

While Minnesota has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP participated in the DNR advisory group convened as part of the revision of ch. NR 151, worked with DNR to achieve a revision of ch. NR 151 consistent with statutory framework and the interests of regulated groups and other stakeholders, informally worked with interest groups including organizations representing farm groups, environmental groups, and government entities such as county land and water conservation departments, conducted listening sessions with affected parties to secure input, and prepared an assessment of the business impacts using DNR's assessment and a methodology similar to the one used for the 2002 nonpoint rule revision.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

In preparing its analysis and supporting documentation, the department consulted with stakeholder groups, reviewed rule documents developed by DNR related to the adoption of 2011 DNR standards, including revised fiscal estimate and final rule order, and estimated costs using a methodology similar to the one used for the 2002 nonpoint rule revision.

Effects on Small Business

Most impacts of this rule will be on farmers, a great majority of whom qualify as "small businesses." The analysis of the impacts on farms takes into consideration the following factors:

- The proposed rule does not add standards for farms. Those were created by DNR in 2011, but focus on implementation of DNR's standards. DNR's analysis of the 2011 standards was consulted.
- In its implementation of the 2011 DNR standards, this rule includes measures intended to minimize the financial impacts on farmers, including a phase-in of the nutrient management requirements for pasture, and limitations on increasing the tillable setback over 5 feet.
- Most farmers will be insulated from some of the costs of implementation by the state's cost-share requirement and the limited state funding available to provide cost-sharing.
- For farmers receiving farmland preservation tax credits, this rule provides farmers flexibility to minimize the financial impacts related to compliance (which range from \$8 to \$12 million state-wide), including a delay in the effective date for compliance with the 2011 DNR standards, the use of performance schedules, pursuit of cost-sharing for which they are eligible, use of a tax credit to offset some implementation costs, or if needed, withdrawal from the farmland preservation program to avoid unmanageable costs.

The proposed rule changes will have small, but positive impacts on businesses other than farmers. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm

conservation practices. The *Initial Regulatory Flexibility Analysis*, which will be filed with this rule, provides a more complete analysis of this issue.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings from 2:30pm-4:30pm and 6:00pm-8:00pm on the dates and at the locations as follows:

- Eau Claire, WI: Tuesday, March 26th, 2013
- Appleton, WI: Wednesday, March 27th, 2013
- Tomahawk, WI: Thursday, March 28th, 2013
- Platteville, WI: Wednesday, April 3rd, 2013
- Madison, WI: Thursday, April 4th, 2013

Following the public hearings, DATCP will prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, DATCP will transmit that final draft rule to the Governor for his written approval and then to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

Wisconsin Department of Agriculture,
Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject:	Soil and Water Conservation
Adm. Code Reference:	ATCP 50
Rules Clearinghouse #:	Not yet assigned
Department Docket #:	11-R-01

Rule Description

General

This proposed rule will modify the soil and water resource management (SWRM) program under ch. ATCP 50, primarily for the purpose of incorporating the changes in ch. NR 151 adopted by the Department of Natural Resources (DNR) in 2011.¹ Specifically, the changes of most significance for this analysis center on the agricultural conservation standards and practices in subchapters I and II of ATCP 50, requirements for farmland preservation conservation compliance in subchapter III and the technical and other standards for practices cost-shared with state funds in Subchapter VIII. Farmers and others may benefit from other rule changes intended to improve program implementation, such as cost-sharing modifications for non-farm conservation practices and clarification of the process for certifying engineering practitioners.

Small Businesses Affected

The moderate impacts of this rule will mostly affect farmers, a great majority of whom qualify as “small businesses.” It is important to note that this rule does not impose new runoff control standards on farmers beyond those required by the 2011 changes to NR 151 (2011 DNR standards), and, in fact, this rule takes certain steps to minimize impacts by defining implementation steps. Most farmers will be insulated from some of the costs of implementation because of the state’s cost-share requirement and the limited availability of state funding to provide cost-sharing. For farmers receiving farmland preservation program (FFP) tax credits, this rule provides farmers the flexibility to minimize financial impacts of compliance, including the option of discontinuing collection of a tax credit as a last recourse to avoid compliance responsibilities.

Rule changes will also affect businesses other than farmers including nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices. The rule

¹ DNR’s final rulemaking order of September 24, 2010, Administrative Rule Number WT-14-08, as well as revised fiscal estimate is available at <https://health.wisconsin.gov/admrules/public/Rmo?nRmold=1703>

will impact these businesses to a much smaller degree, and with primarily positive impacts.

To reach its conclusion regarding impacts on farmers and non-farmers, the department first defines its responsibility to assess impacts in relation to DNR's responsibilities. To place its analysis in context, the department reviewed the cost estimates prepared by DNR as part of its adoption of the 2011 agricultural performance standards. This review includes a discussion regarding DNR's primary justification asserting the limited impacts of the 2011 DNR standards; namely, the cost-share requirement imposed by state law.

The analysis then turns to the impacts directly related to this rule, which focuses on implementation of the 2011 DNR standards. The department separately analyses the impacts on farmers and non-farmers, and each of these analyses considers the direct costs and benefits of this rule; reporting, bookkeeping and other procedures; and professional skills required. Key aspects of this rule that are designed to minimize impacts of the 2011 DNR standards on farmers are also included in this analysis. The department also considered the requirements of the farmland preservation program, as modified by this proposed rule, in assessing the impacts. After performing this expanded analysis of costs and impacts, the department finds no reason to modify DNR's conclusion regarding the impacts of the 2011 DNR standards, and ultimately the department concludes that this rule will create no more than a moderate impact on farmers and other businesses.

DNR Impact Analysis

When DNR adopted the new and modified state runoff standards for farms as the lead agency responsible for setting performance standards, it analyzed the costs of the new and modified standards as part of its fiscal and business analyses, received public comment, and then summarized its conclusions in its final rulemaking documents.

DNR's 2011 rule revision expanded the runoff standards for farms, and was a minor adjustment in comparison to the 2002 rule that created the new state agricultural performance standards. The 2011 DNR standards defined the framework for the department's limited rulemaking, relegating the department to clarification of the practices and cost-sharing needed to comply with the new ch. NR 151 requirements.

DNR's 2011 rule order added the following new and modified performance standards to address polluted runoff from farms:

- A setback area between cropland and waterbodies within which tillage is prohibited for the purpose of maintaining streambank integrity and avoiding soil deposits into state waters.
- A new annual and rotational limit on the amount of phosphorus that may run off cropland and pasture, as measured by a phosphorus index.
- Extension of the sheet, rill and wind erosion standard to pastures starting July 1, 2012.
- A prohibition against significant discharge of process wastewater from milk houses, feedlots, and other similar sources.

- A requirement that crop and livestock producers reduce discharges if necessary to meet a load allocation specified in an approved Total Maximum Daily Load (TMDL) by implementing targeted performance standards specified for the TMDL area using best management practices and farm conservation practices in ch. ATCP 50.
- Manure storage standards for existing and new facilities are modified to include margin of safety requirements, and redefine responsibilities for closure.

In its 2011 rulemaking order (p. 10), DNR reached the following conclusion regarding impacts on small businesses: “the overall effect on small businesses may be increased time, labor and money spent on BMPs or planning tools, but there will not be a significant economic impact on small business.” This conclusion applies to most farms which are considered small businesses. Also, the small business focus is a reliable measure of impacts on all farms because many of our state’s largest livestock operations must already meet process wastewater and nutrient management requirements as part of their WPDES permits, including pastures. Confirming this interpretation of overall impacts, DNR’s revised Fiscal Estimate, which specifically addressed all private sector impacts and concluded that: “The department [DNR] does not believe that the rule revisions will have a significant fiscal impact on the private sector.”

Regarding increased time, labor and money, DNR’s rule making order (pp. 9-10) states that: “the rules will not result in additional reporting or significant increases in record-keeping requirements for small businesses. Rather than mandate specific design standards, the rules either establish new performance standards or revise existing performance standards.”

To support its assessment of the financial impacts of the 2011 DNR standards, DNR’s rule making order (pp. 9-10) provides the following:

“Agricultural producers who are in compliance with the existing nutrient management performance standard may already be in compliance with the new phosphorus index and tillage setback performance standards. A phosphorus reduction strategy is included in NRCS nutrient management technical standard 590 (Sept. 5, 2005). A phosphorus index of 6 or less is specified in the PI strategy in Criteria C, 2 of the technical standard. The concept of streambank integrity, as proposed through a tillage setback performance standard, is an assumption of the phosphorus index calculation, which estimates phosphorus delivery to the stream via overland flow, but not from bank erosion or other means that soil, manure or fertilizer might enter the stream from farming operations.”

DNR’s revised Fiscal Estimate (p. 4) also discusses provisions of the new standards designed to “limit the financial impact of the new standards on the private sector” and provides these examples:

“In the agricultural portion of NR 151, the Phosphorus Index (PI) performance standard requires that the average PI calculated over an 8-year period shall not exceed 6, and also requires that the PI shall not exceed 12 in any year. Allowing use of planning information until records can be established will greatly reduce the effort required to document the PI accounting period. Crop producers may use alternative methods to calculate the PI for situations where available tools are not adequate, which will help some producers such as cranberry farmers develop suitable methods to determine compliance. A PI cap of 12 provides considerable leeway to manage crops using conventional methods, although in some cases additional cropping management measures will still be needed such as where corn silage is grown on steeper slopes or where vegetable crops are grown in areas where excessive phosphorus has accumulated in soils. The standard tillage setback requirement is 5 feet, which will not significantly reduce the amount of land available for cropping. The rule contains provisions that allow some bare areas within pastures for cattle travel lanes and supplemental feeding areas. This will allow standard pasturing management, although if such bare areas become significant pollution sources then they will be subject to additional management requirements.”

DNR evaluated specific costs in reaching its conclusions about the new and modified performance standards. For example, the revised Fiscal Estimate (p. 2) provides a detailed calculation in relation to implementation of the new process wastewater performance standard. Based on a \$13.3 million estimate for the cost of full implementation, DNR determined that the state would need \$9,312,500 for landowner cost-sharing, with landowners responsible for paying about \$4.0 million if 70 percent cost-sharing were provided.

Cost-Share Requirement Limits Impact

The state cost-share requirement was critical to DNR’s determination regarding the limited economic impact of the 2011 DNR standards. In support of its position, DNR in the final rule making order (p. 10) explains:

“Compliance requirements for agricultural producers vary depending on the type of operation and the performance standard, but the revisions to the rules will not change the existing compliance requirements for agricultural operations. Under state law, compliance with the performance standards is not required for existing nonpoint agricultural facilities and practices unless cost sharing is made available for eligible costs. A less stringent compliance schedule is not included for agricultural producers because compliance is contingent on cost sharing and in many cases, it can take years for a county or the state to provide cost share money to a producer.”

The following facts bear out DNR's position about the relationship between funding and implementation of the 2011 DNR standards on Wisconsin's 78,000 farms (2011 Wisconsin Ag Statistics). Based on state cost-sharing provided in the 10 years from 2003-2012, the state is likely to provide no more than \$10-\$13 million annually to cost-share practices in the future, and it is likely that funding may even decline further.² Between \$8 to \$10 million annually will likely be in the form of bond revenue funds that can be used to pay for hard practices such as those to control discharges of process wastewater or stabilize streambanks to protect their integrity. Only \$2 to \$3 million will likely be available each year to cost-share nutrient management plans for pastures and soil erosion control practices needed to meet the phosphorus index (PI) performance standard.

In addition to possible reductions in funding based on budget considerations, other factors will limit the amount of state funds available to cost-share the 2011 DNR standards. In the foreseeable future, much, if not all, of state funds are likely to be spent on cost-sharing practices to comply with the original performance standards and prohibitions adopted in 2002. At the time of their adoption in 2002, the department and DNR estimated that \$373-\$573 million were necessary to fully implement the original performance standards over ten years. In its first ten years of implementation of the designed nonpoint program, DNR and DATCP provided \$100 million in cost-share funding. Less certain in terms of future trends, but no less important, is that there may be reduced state support for county conservation staff if recent budget cuts become the norm. County conservation staff are the only public sector professionals authorized to distribute state cost-share funding from the department and DNR. Reduced staff support translates into fewer county staff in the field and diminished capacity to provide technical services and to deliver cost-share dollars.

DATCP Impact Analysis

Under the state framework for managing farm runoff, the department is responsible for implementation of performance standards promulgated by DNR. In the case of the 2011 DNR standards, DNR rule changes went beyond setting performance standards³, further circumscribing the department's rule making options and confining the impacts arising out of this proposed rule. In the end, the key focus of ch. ATCP 50 rule revisions involves clarifying the implementation of the new standards for pastures and a tillage setback, and the implications of the new standards for farmer participants in FPP. As

² If recent history is any indicator, the state is less likely to increase spending and incur debt. In 2012, for example, the department and DNR each year provided counties about \$10.8 million in cost-share funding, a reduction of nearly \$8.0 million from the amount provided in 2002 when there were fewer performance standards.

³ For example, DNR established the definition of pasture, and assumed responsibility for approving an alternative method for calculating the phosphorous index. Nor can the department address DNR's rule change to eliminate the cost-share requirement for closing manure storage facilities that do not meet s. NR 151.05 (3) and "were either constructed on or after Oct. 1, 2002, or were constructed prior to Oct. 1, 2002 and subject through Oct. 1, 2002 to the operation and maintenance provisions of a cost share agreement."

noted in the “Accommodation for Small Business”, this rule in fact employs measures to minimize those impacts generally, and specifically in regard to the FPP participants.

Farmers

Implications for Recipients of Farmland Preservation Program (FPP) Tax Credits

The impacts from this rule on farmers participating in the FPP arise from the changes related to FPP implementation. In the case of the 15,023 farmers who collected \$18.9 million in farmland preservation tax credits (based on 2012 payments for tax year 2011 claims, <http://www.revenue.wi.gov/ra/FarmPres2012payments.pdf>), they may be required to comply with new and modified standards without cost-sharing. Identifying impacts with precision is complicated by a number of factors including the changes in program participants over time, the compliance status of new participants, and the range of options to achieve compliance.

The department’s proposed rule revision has taken several steps to limit impacts on this group by providing time for program participants to comply with the new and modified performance standards, and allowing participants to claim a tax credit on the basis of performance schedules. In addition, the proposed rule has sought to ease the transition to the standards for farmers with pastures by first focusing application of nutrient management plans to pastures in high risk locations. Also, farmers may receive cost-sharing to install conservation practices necessary to maintain their eligibility for tax credits. Last, but not least, farmers who do feel the compliance burdens are too great may decide to stop collecting a tax credit rather than implement the new standards.

Notwithstanding these accommodations, there is a fiscal impact on FPP farmer participants. To comply with the phosphorus index requirement, FPP participants have alternatives short of installing soil erosion control practices to reduce discharges. In the quote from the DNR fiscal estimate (pp. 4-5 above), several options are discussed. However, some participants may need to install conservation practices to reduce erosion on cropland. By 2020, when the phase-in for pastures is completed, all farmers will need to develop nutrient management plans for pastures. In the end, the department estimates that FPP participants may need to spend \$5 to \$7 million to develop nutrient management plans for their pastures once the requirement is fully phased in. To meet the process wastewater standard, this rule gives producers options to reduce discharges below the significant threshold without installing the most expensive practices required when state or federal cost-sharing is provided. However, to access cost-sharing, some farmers may select higher-cost options which require that they install practices that must fully meet NRCS technical standards and specifications. The department estimates that the costs for meeting the process wastewater standard will range from \$2 to \$4 million.

Recordkeeping and New Skills Required

In considering impacts, the department must evaluate additional reporting or record-keeping requirements imposed on farmers, particularly with respect to nutrient

management planning. Consistent with DNR's assessment, the department believes these impacts will not be significant. Among the chief reasons for this conclusion, the department assumes that these obligations will not arise in most cases unless farmers are provided cost-sharing. For those farmers who must comply with nutrient management requirements related to the new pasture standard or the phosphorus index, they will need to:

- Manage soil test and other data to prepare nutrient management plans.
- Understand and keep records of soil types, soil tests, crop nutrient requirements (including University of Wisconsin recommendations), nutrient applications, nutrient contents of manure, nutrient application scheduling and other matters related to nutrient management. Most farmers have knowledge in some or all of these areas, but some farmers may need to update or expand their knowledge.

The increased requirements for nutrient management planning are slight in comparison with the responsibilities imposed on farmers in 2002 when the nutrient management standards were first adopted, or in comparison to 2005 when the standard was modified to include the phosphorus component. As noted in the DNR Revised Fiscal Estimate (p. 4), "allowing use of planning information until records can be established will greatly reduce the effort required to document the PI accounting period."

Farmers claiming FPP tax credits already must keep records to document compliance with the DNR performance standards adopted in 2002. For FPP participants, additional recordkeeping created by this rule should be minimal. For example, since farmers already must keep records related to nutrient management plans, farmers should be able to readily incorporate requirements relating to pasture and PI into their systems.

By its nature, the business of farming requires that farmers be skilled at managing changes that are driven by the need to incorporate new technologies, respond to growing conditions or modify production methods. In changing bedding systems for livestock, for example, a farmer must work through a challenging series of steps to deploy new equipment and change management practices, and may use adaptive management techniques to overcome challenges. The skills and experience gained in these settings help farmers manage newly installed conservation practices such as feed storage runoff control systems. Nonetheless, there is a learning curve that farmers must negotiate. In the case of nutrient management, farmers may need to build their skills with computers to take advantage of tools that facilitate tracking of the PI on cropland and pastures.

Whether the challenge involves recordkeeping or new skills, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. Farmers need to make changes to meet other program requirements including state and local permitting and federal cost-share programs. For example, expanding livestock operations must at a certain point control discharges of process wastewater as condition of a required permit. Many programs, from county manure storage permits to FPP, require that farmers have nutrient management plans for their cropland. For farmers in these programs, it is a small step to add pastures to these required nutrient management

plans.

Overall Impact on Farmers

This impact analysis focuses primarily on the costs associated with compliance by participants who claim FPP tax credits. In evaluating the net impact on FPP participants, the department weighed the potential costs against offsetting considerations such as DNR and department rule provisions intended to minimize implementation costs, the option of withdrawing from the program, access to cost-share funds, and the availability of tax credits to offset costs. In its final analysis, the department estimates an impact of \$8 to \$12 million to implement the 2011 DNR standards based on FPP cross-compliance.

The department believes that recordkeeping and other increased responsibilities are offset by a number of factors including DNR and department rule provisions that minimize burdens, and the following potential benefits from implementation of the 2011 DNR standards:

- Promotion of more efficient use of nutrients and possible cost-savings on fertilizer through nutrient management planning.
- The implementation of conservation practices that provide protection against environmental and other liability created by runoff events or groundwater contamination.
- The protection of water quality, particularly for drinking water wells, through conservation practices.
- Improved availability of the department cost-sharing as a result of cutting red tape and adding new efficiencies in managing grant funds.
- Improved focus of limited cost-share funds on support for farmer compliance with conservation practices by excluding the use of cost-sharing on land owned by state and local governments, and (limiting or encouraging reduced) cost-sharing for practices not required to achieve compliance with state runoff performance standards, and by clarifying that economic hardship is not available to non-farm landowners.
- Provision of a wider range of engineering services from conservation engineers to farmers and others as a result of the simplification of the process for updating their certification.

Non-Farm Businesses

This rule has the following impacts on non-farm businesses, a considerable number of which qualify as “small businesses.”

Nutrient Management Planners and Crop Consultants

This rule will marginally increase the demand for professional nutrient management planners to help implement the phosphorus index and to develop nutrient management plans for pastures. Nutrient management planners who prepare plans for others must be

qualified to do so, and these qualifications will equip them to develop plans for pastures. Nutrient management planners must know how to prepare nutrient management plans. They must understand and follow record keeping requirements related to soil types, soil tests, crop nutrient requirements (including University of Wisconsin recommendations), nutrient applications, nutrient contents of manure, nutrient application scheduling and other matters related to nutrient management. Planners holding certain professional credentials are presumed to be qualified. Professionals with the knowledge and skill to use SNAP-Plus, a computer program critical to calculating the phosphorus index, are in a special position to capture business.

Farm Supply and Farm Service Organizations

This rule will marginally increase the demand for entities that provide services to farmers. Farm supply and farm service organizations may provide nutrient management planning services, crop consulting, fertilizer sales, conservation compliance and other services. They may also sponsor the department-approved training courses for farmers who wish to develop their own nutrient management plans.

This rule will not necessarily increase demand for manure hauling services. Nutrient management planning on pastures will not trigger demand for this service.

This rule is not likely to have a measurable impact on the sales of agricultural fertilizers, since it will not likely to create an increase in sales to those farmers who must manage nutrients more carefully. Persons selling agricultural bulk fertilizer to farmers must record the name and address of the nutrient management planner (if any) who prepared the farmer's nutrient management plan. This rule does not prohibit the sale of fertilizer to a farmer who lacks a nutrient management plan.

Soil Testing Laboratories

This rule will slightly increase demand for soil testing. Nutrient management plans must be based on soil tests conducted by certified laboratories. The department certifies soil testing laboratories and may audit laboratories to ensure accurate testing.

Construction Contractors

This rule will slightly expand the demand for construction of farm practices by contractors, particularly in the area of process wastewater management. This rule does not substantially alter construction standards for new or modified performance standards, nor does it impose any new contractor reporting or recordkeeping requirements. This rule may affect construction demand and the distribution of projects across the state. Certain changes such as limitations on cost-sharing for non-farm projects may reduce certain business opportunities. This may not affect large contractors who can make adjustments to handle changes in demand, but smaller, less flexible operations may be negatively affected.

Conservation Engineering Practitioners

This rule may increase demand for agricultural (conservation) engineers and engineering practitioners. Certain conservation practices must be designed by licensed engineers or certified engineering practitioners, to ensure safety and effective performance. Engineering costs are eligible for cost-sharing under this rule.

Under this rule, as under prior rules, conservation engineering practitioners must be certified by the department. This rule simplifies current certification requirements and procedures.

Recordkeeping and New Skills Required for Non-Farm Businesses

This rule does not directly trigger changes in reporting, bookkeeping or other procedures for non-farm businesses.

Business professionals will need to enhance their skills to help farmers implement the 2011 DNR standards; however, these professionals will likely take these actions for reasons other than this rule. Engineers and nutrient management planners must keep pace with the latest technical standards to meet the needs of customers and protect themselves from liability. Certain professionals such as engineers and certified crop advisors are required to update their skills to retain their registration or certification.

Reporting, Bookkeeping and other Procedures

To the extent that this rule requires reporting, bookkeeping or other procedures, the department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Professional Skills Required

To the extent that this rule requires changes in professional skills, the department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Accommodation for Small Business

Both DNR and the department have taken steps to identify compliance and reporting effects of these rule changes. In its final rule draft, DNR considered: (1) the existing performance standards and prohibitions in ch. NR 151, (2) the requirements of NRCS technical standard 590 needed to meet the nutrient management performance standard, (3) assumptions contained in the Wisconsin phosphorus index, and (4) feedback from members of advisory committees that included small business owners and organizations. The department worked extensively with farm representatives and others to minimize adverse effects of this proposed rule on small business. The department took the

following actions: (1) worked with DNR to determine the scope of the department rule revision, (2) conducted listening sessions that included farm and conservation groups, (3) held numerous public hearings throughout the state, (4) prepared simplified information materials, and (5) reviewed the rule to identify opportunities to accommodate small businesses.

While DNR's 2011 rule revision established the core requirements, most of which the department could not alter, the department's proposed rule provides accommodations to small businesses. These accommodations minimize the impact on farms and other businesses, both small and large. In general, this rule:

- Clarifies the process for annual review of nutrient management plans to ensure that plans are updated when needed.
- Allows farmers to identify practices to meet new performance standards such as the process wastewater standard, particularly if the discharge can be reduced to below the level of "significant".
- Seeks voluntary compliance with the rule changes to the maximum extent feasible, consistent with the department's past approach.
- Incorporates NRCS standards for feed storage, manure storage and waste transfer that recognize less costly approaches to manage smaller systems.
- Eases the transition for farmers with pastures by limiting the initial application of nutrient management plans to pastures in high risk locations.
- Improves availability of department cost-sharing by cutting red tape and adding new efficiencies in managing grant funds.
- Minimizes the removal of cropland from production necessary to comply with tillage setback within NR151, through precise interpretation of the tillage setback requirements.
- Enables conservation engineers to provide a wider range of engineering services to farmers and others by simplifying the process for updating their certifications.

In connection with the farmland preservation program, this rule:

- Provides a phase-in for 2011 DNR standards for farmers who must meet the conservation compliance requirements to receive a farmland preservation tax credit.
- Creates a range of options for a farmer, from a performance schedule to voluntary exit from the program, which will enable farmers to make choices about how to meet the added compliance responsibilities.

Conclusion

This rule will have no more than a moderate impact on farmers, including “small businesses.” The limited scope of the rule changes, combined with the cost-share mandate, account for the reduced impact. Other businesses may slightly benefit from these rule changes.

Dated this 6th day of February, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

John Petty, Administrator
Division of Agricultural Resource Management

Wisconsin Department of Agriculture, Trade and Consumer Protection Environmental Assessment

Rule Subject: Soil and Water Resource Management Program
Administrative Code Reference: ATPC 50
Rules Clearinghouse #: Not yet assigned
THE DEPARTMENT Docket #: 11-R-01

This environmental assessment is required by s. ATPC 3.02, Wis. Adm. Code.

Nature and Purpose of Proposed Rule

Chapter ATPC 50 is being revised to implement new and modified farm runoff control standards adopted by the Department of Natural Resources (DNR) in 2011 (hereinafter referred to as "2011 DNR standards"). The 2011 DNR standards require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (TMDL). Under state law, the Department of Agriculture, Trade and Consumer Protection (the department) is responsible for developing conservation practices and other components necessary to implement performance standards for farms. This rule will update farm conservation standards (Subch. II) and related definitions (including updates to the RUSLE 2 definition), revise the soil erosion standard to include pastures, modify nutrient management planning requirements for pastures, and provide a method for establishing the distance between 5 and 20 feet for a tillage setback.

This rule will improve the framework for the statewide soil and water resource and management (SWRM) program. This rule will clarify the conservation compliance requirements, including a phase-in of the farm runoff standards under ch. NR 151 in the farmland preservation program (FPP). This rule will improve the mechanism for the distribution of department grant funds to counties (Subch. IV), with a primary goal of facilitating farmer access to cost-share funds needed for extended implementation responsibilities, and specify a process for providing cost-share dollars that is more efficient and customer friendly. Also, changes in the rule will simplify the manner in which engineering practitioners are certified.

In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing. This rule will update technical and other standards for practices cost-shared with state funds (Subch. VIII).

Foreseeable Environmental Effects

The environmental effects of this rule are positive. This rule will supply key components to ensure implementation of new and modified farm runoff control standards designed to protect water quality and prevent soil loss by:

- Controlling discharges of process wastewater from livestock operations.
- Reducing soil erosion from pastures.
- Expanding nutrient management plan requirements to include pastures.
- Documenting compliance with nutrient management plans through the phosphorus index.

The addition of new requirements ensures a more comprehensive approach to managing runoff from farms, and enables farmers to take actions that better protect natural resources. Provisions in this rule are designed to reduce unintended consequences from the installation of conservation practices. For practices which are paid for with department funds, cost-share recipients must take actions to mitigate impacts from excavation and other installation activities including measures to manage sediment runoff from construction sites. This rule specifically updates the standards used to mitigate runoff during and after construction of conservation practices.

Through improvements in the SWRM framework, this rule will facilitate farmer access to cost-sharing for conservation practices designed to protect water quality and reduce erosion. This rule will update and expand standards for cost-share practices, allowing counties to cost-share feed storage runoff control and other practices needed to achieve compliance with the 2011 DNR performance standards. By improving the process for certifying practitioners, this rule ensures that county conservation staff and other conservation engineering personnel are better qualified to assist farmers and other landowners with the design and installation of engineered conservation practices.

A number of factors will determine the degree to which farmers implement new and modified standards that will produce increased environmental benefits. The availability of cost-sharing is the most important factor in implementation. Most farmers must receive an offer of cost-sharing to secure compliance. Some farmers may voluntarily choose to comply with the new standards. A small group of farmers may be required to implement these new standards without cost-sharing. Farmers may need to comply to meet local and state permits as a condition for collecting FPP tax credits. Over time, the level of state and federal cost-share funds will be the critical factor in determining the extent to which the 2011 DNR standards are implemented on farms, and the degree of environmental benefits attained.

Based on changes in cost-sharing provided in non-farm settings, there may be less implementation of streambank and shoreline protection and other certain conservation practices using department funds. As noted below, non-farm landowners may have reduced or no access to cost-share funds. However, any reduced benefits on the non-farm front will be offset by increased cost-share dollars available to install conservation practices on farms.

Persons or Groups That May Be Affected by the Rule

Farmers: This rule modifies conservation standards that apply to all farms. Most farmers are not required to implement these standards unless they receive an offer of cost-sharing of at least 70 percent (90 percent in the case of economic hardship). This rule will update conservation compliance requirements for FPP participants and the standards for cost-shared practices.

Non-Farm Landowners: This rule modifies standards used to cost-share non-farm practices such as streambank and shoreline protection. This rule restricts the availability of cost-share funds for certain practices, and certain landowners, and restricts government entities from receiving cost-sharing.

County Conservation Programs and Cooperators: This rule makes changes to the SWRM program that will impact county conservation programs and cooperators that receive department funding. Counties are primarily responsible for implementation of farm conservation standards and practices including the 2011 DNR standards. This rule clarifies the state standards and practices such as the tillage setback that counties implement through conservation programs, conservation compliance requirements under FPP, and the manner in which counties use department funds to cost-share practices.

Conservation- and Farm-Related Businesses: Changes in the rule will provide slight benefits based on increased business opportunities to farm supply organizations, nutrient management planners, soil testing laboratories, engineers, and construction contractors provide goods and services purchased by landowners who receive cost-sharing.

Rural Residents: Rural residents benefit from activities supported by the rule, including county resource management planning, farmland preservation, technical assistance, and installation of conservation practices. Those neighboring landowners with properties located "downstream" of lands with nutrient and sediment delivery runoff problems also stand to benefit. Certain measures, such as feed storage runoff controls, will protect water quality and assist in safeguarding drinking water wells that serve neighboring landowners and communities.

General Public: The general public will benefit from this rule as a result of increases in farm-focused natural resource protection. Cleaner water has a number of benefits including improved public health and recreational opportunities.

Significant Economic, Social or Cultural Effects

Economic Effects

The economic impact of the proposed rule is moderate. This assessment accounts for the group most significantly impacted by the rule, farmers, and takes into consideration the implications of the 2011 DNR standards for farmers participating in FPP and potential benefits such as liability protection in this rule. This rule is expected to have a minimal but positive effect on businesses that work with farmers such as nutrient management planners, and engineering firms. The *Initial Regulatory Flexibility Analysis* contains a detailed analysis of these considerations.

Conservation practices contribute to cleaner surface and ground water, which produces tangible economic benefits. Among other benefits, improvements in water quality protect property values

of waterfront homeowners, reduce treatment costs for drinking water, and enhance recreational opportunities and protect the scenic rural landscape, both of which are essential to tourism.

Social and Cultural Effects

On balance, the proposed rule will produce positive social effects. Through the increased adoption of conservation measures, farmers take positive actions to protect water quality and reduce soil erosion. These actions enhance public acceptance of farming, and strengthen farmers' credibility as environmental stewards. In rural communities, these actions are appreciated by farm neighbors who are concerned about protecting groundwater used as a source of drinking water. Systematic efforts to install conservation practices minimize some of the concerns of the public in urban areas who worry that farmers are not doing their part to protect the environment.

In conjunction with this rulemaking effort, the department has improved its process for assessing the potential impacts of cost-shared projects on cultural resources. These improvements will ensure cultural resources are protected when conservation practices are installed.

Controversial Public Issues

The department does not anticipate major public controversy related to this rule. Chapter NR 151, addressed high profile issues related to new and modified standards for the rule. In particular, DNR worked out resolutions to standards related to the tillage setback, phosphorus index, and implementation of targeted performance standards in TMDL. DNR took various actions to identify and respond to issues, including feedback from members of advisory committees, that included small business owners and stakeholder organizations.

During the hearing and comments process, the department anticipates receiving additional public feedback on these topics, particularly regarding changes in the cost-sharing of non-farm practices such as the prohibition against using the department cost-sharing on government-owned land.

Alternatives to this Rule

No Action

Not promulgating the proposed rule would cause the department to be in violation of state statutes. The department is required to promulgate rules prescribing conservation practices to meet performance standards and to specify a process for the development and distribution of technical standards for the practices (s. 281.16 (3) (b), Stats.). The department is also required to promulgate rules related to cost-sharing (s. 281.16 (3) (e), Stats.). If no action is taken, the most recent changes to NR 151 will be implemented using the current version of ch. ATCP 50. Should this occur, some of 2011 DNR standards could be implemented while others may not be

implemented absent clarification provided by this rule. Unless the department takes action, farmers will not have options to cost-share practices such as feed storage leachate runoff control required to meet the 2011 standards nor will they benefit from other accommodations designed to ease implementation of 2011 DNR standards. Without an update to ATCP 50, counties, farmers and other landowners will be required to follow outdated rule provisions including technical standards that do not provide improved environmental benefits, and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

The department must develop applicable land and water conservation standards for owners claiming farmland preservation tax credits (s. 91.80, Stats.). This rule will ensure that the department has in effect the most current standards for conservation compliance.

The department is required by statute to establish by rule a nutrient management program (s. 92.05 (3) (k), Stats.). Without a rule change, farmers would not have a phased-in approach to implement nutrient management on pastures.

The department is required by statute (s. 92.18 (2) (b), Stats.) to develop and maintain requirements of a certification program for the design and installation of conservation practices in conformance with the engineering approval system used by the Natural Resources Conservation Service (NRCS). Without rule changes, the department cannot maintain a conservation engineering program that is consistent with NRCS's parallel program. Failure to update ch. ATCP 50 would hinder current and future coordination of federal, state and local conservation programs.

Finally, the environmental and other benefits of the 2011 DNR standards will not be realized without the department's rule changes.

Modify Rule Provisions

The department could modify the proposed rule provisions. However, the department developed this rule in consultation with government agencies, organizations and industry groups that have supported implementation of the 2011 DNR standards and other provisions of this rule. This rule includes specific accommodations to address the needs of the most impacted groups, and represents a fair balance between the business concerns and the need for natural resource protection.

Additional Measures to Mitigate Adverse Environmental Effects


The department does not anticipate any adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule will implement the 2011 DNR standards and make improvements in department programs that will facilitate implementation of these standards. Overall, this rule will have a positive effect on the environment. However, implementation of conservation practices will depend on available cost-sharing. There are no preferable alternatives to this rule. This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats., or ch. ATCP 3.

Signed this 6th day of February, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John Petty, Administrator
Division of Agricultural Resource Management

**PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 permanent rule *to repeal* ATCP 50.01 (11) and (18) (a) (Note), 50.28 (5) (b) 1. (Note), 50.32 (8)
3 (c) 3., 50.40 (9) (c) 1. to 3., (L) 1. to 3., (14) (a), (b) and (c), 50.52 (2) (e), 50.62 (5) (e) 6. (Note),
4 50.63 (5) (Note), 50.67 (3) (c) (Note), 50.68 (4) (a) (Note), 50.69 (4) (a) 7. (Note), 50.70 (4) (b)
5 9. (Note), 50.71 (3) (b) 3. (Note), 50. 72 (3) (a) 7. (Note), 50.73 (3) (d) (Note), 50.74, 50.75 (4)
6 (a) 2. (Note), 50.76 (5) (a) 5. (Note), 50.77 (4) (a) 5. (Note), 50.80 (3) (a) 9. (Note), 50.82 (4) (c)
7 3. (Note), 50.83 (3) (a) 9. (Note), 50.84 (5) (a) (Note), 50.85 (4) (a) 2. (Note), 50.86 (4) (b) 8.
8 (second Note), 50.87 (4) (a) 3. (Note), 50.88 (2) (a), 50.88 (2) (d) and (f) and (3) (a) 5. (Note),
9 50.89 (3) (b) 3. and 4. and (Note), 50.90 (3) (b) 2., 50.91 (3) (b) 8. (Note), 50.92 (3) (b) 2.
10 (Note), 50.93 (4) (a) 2. (Note), 50.94 (3) (a) 5. (Note), 50.95 (3) (a) 4. (Note), 50.96 (3) (b) 7.
11 (Note), 50.97 (3) (b) (Note), 50.98 (3) (a) (Note), Appendices A to G; *to renumber* ATCP 50.28
12 (5) (a) 1., 50.30 (3) (o), 50.32 (5) (B) (Note), 50.62 (5) (e) 6., 50.88 (2) (c) and (e); *to renumber*
13 *and amend* ATCP 50.28 (5) (a) 1. (Note), 50.40 (14) (intro.), 50.46 (3) (intro.) and (11), 50.66
14 (3) (a) 3. (Note), 50.88 (2) (b); *to amend* ATCP 50.01(17), (18) (a), (b) and (c), (20), (27) (Note),
15 (31) (a) and (b) and (33), 50.04(1), 50.04 (2) and (Note), (3) (a), (b), (dm)1. (Note), (e) (Note),
16 (f) (intro.), (f) 4. (Note) and (h) (intro.), 50.08 (1) (intro.), (a) (Note) and (2) (Note), 50.10 (1) (b)
17 and (Note), 50.12 (2) (j), 50.16 (6) (a) 1. and 2., (b)1., (c) (intro.) and 2., and (d), 50.18 (1) (b),
18 50.26 (2) (a), 50.28 (5) (a) 2. and 3. and (b), 50.30 (1), (2) (intro.), (b), (c), (d), and (3) (b), (g),
19 (h), (m),(o) and (p), 50.32 (3) (a) (Note), (3) (b), (5) (a) (Note), (7) (b), (8) (b) and (c) 2., and (c)

1 4., 50.34 (1) (b), (3) (a) and (Note), (6) (a) 3. and (6) (b), 50.40 (2) (d) and (Note) and (3) (a)
2 (Note), 50.40 (4), (7) (b), (9) (c) (intro.), (d) and (j) (Note), (L) (intro.) and (n), (10) (b), (11) (b)
3 (intro.), 2. and 3. and (17), 50.42 (4) (intro.), 50.46 (title), (3) (title), (4) (a), (5) (a) (intro.), (a) 1.
4 and 2. (Note), (6) (b), (7) (a), (9) (c) 2., (10) and (12), 50.50 (2) (intro.) and (g) (Note), (4)
5 (intro.) and (c) (Note), and (8) (b) (Note) and (c) (Note), 50.52 (1) (g) and (Note) and (2) (d),
6 50.54 (1) (Note) and (2) (b), 50.56 (2) (e) and (f), (4) (intro.), (a), (b), (c) and (Note) and (6),
7 50.60 (1) (a) (Note), 50.61 (title) and (1), 50.62 (1) (e) 1. and 3., (3) (d) (Note) and (5) (e) 1. to
8 5., (f), 50.64 (1) (a), (b) and (e) and (5) (a) and (b), 50.65 (title), (1), (2), (3) (intro.), (a) and
9 (Note) and (b), 50.66 (title), (1), (2) (3) (intro.), (a) and (b), 50.67 (3) (a), (b) and (c), 50.68 (4)
10 (a), 50.69 (1), (4) (a) 1. to 7., and (b), 50.70 (4) (b) 1. to 4. and 6. to 9., 50.71 (1) and (3) (b) 1. to
11 3., 50.72 (3) (a) 1. to 3. and 5. to 7., 50.73 (3) (d) 1. to 7. and 9. to 12., 50.75 (4) (a) 1. and 2.,
12 50.76 (5) (a) 2. to 4., 50.77 (4) (a) 1. and (Note) and 2. to 4., 50.78 (3) (a) (Note), 50.79 (2)
13 (intro.), (3) (a) 1. and (b), 50.80 (3) (a) 1. to 6., 7. (Note) and 8., 50.80 (4) (c) 1. to 3., 50.83 (3)
14 (a) 1. to 3., 5. to 7., and 9., 50.84 (5) (a), 50.85 (4) (a) 1. and 2., 50.86 (4) (b) 1. to 8. and (Note),
15 50.87 (4) (a) 1. to 3., 50.88 (title), (1), (2) (intro.) and (3) (a) 1. to 5. and (c), 50.89 (3) (b) 1. and
16 2., 50.90 (3) (b) 1. and 2., 50.91 (3) (b) 1. and 4. to 8., 50.92 (3) (b) 1. and 2., 50.93 (4) (a) 1. and
17 2., 50.94 (3) (a) 1. to 5., 50.95 (3) (a) 1. to 4., 50.96 (3) (b) 1. to 7., 50.97 (3) (a); *to repeal and*
18 *recreate* ATCP 50.16 (title), (1), (2), (3), (4) and (5), 50.26 (2) (a) (Note), 50.32 (5) (b) and (7)
19 (c) 4. and (Note), 50.34 (1) (b) (Note), 50.40 (10) (b) (Note), 50.46 (1), (2), (2m), (11) (b),
20 50.56 (3), 50.88 (3) (b); and *to create* ATCP 50.01(2m), (15m) and (29m), 50.04 (1) (Note), (3)
21 (gm), (3) (hm) and (4), 50.12 (2) (jm), 50.16 (6) (a) 5. and (Note), (b) 3. (Note) and (6) (d)
22 (Note), 50.28 (5) (a) 1. b. and 5. and (c), 50.30 (1) (Note), (2) (e) and (f), 50.32 (3m) and (7) (a)
23 (Note), 50.34 (1) (d), (5m) and (Note) and (6) (a) 3. (Note), 50.35, 50.40 (3) (b) 12. to 14., 50.40

1 (14) (b), (c), (d) and (Note), 50.42 (1) (a) (Note), (b) and (dm), 50.46 (3) (b) and (Note), (c) and
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3 50.56 (4) (a) (Note), subch. VIII (Note), 50.61 (3) and (4) and (Note), 50.62 (1) (b) 6. and (e) 5.,
4 (5) (e) 6. to 8., (em) and (f) (Note), 50.64 (1) (v) (Note) and (5) (c) and (second Note), 50.65 (2)
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6 and 7., 50.82 (4) (c) 4., 50.88 (1) (a) to (h), (2) (c) (Note) and (2m), 50.885, 50.96 (3) (b) 8.;
7 *relating to* soil and water resource management and affecting small business.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

This rule modifies ch. ATCP 50, Wis. Admin. Code, related to Wisconsin's soil and water resource management (SWRM) program. The department of agriculture, trade and consumer protection ("DATCP" or "department") administers the SWRM program under ch. 92, Stats. The SWRM program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent pollution runoff and enhance water quality.

Statutes Interpreted

Statutes interpreted: ss. 71.57 to 71.61, 71.613 (3), 91.80 and 91.82, ch. 92, and s. 281.16, Stats.

Statutory Authority

Statutory authority: ss. 91.82(3), 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.07 (1), and 281.16 (3) (b) and (c).

Explanation of Agency Authority

DATCP has responsibilities imposed by statute for implementing the state's nonpoint source pollution control program. Sec. 281.16, Stats., requires that DATCP develop rules to implement department of natural resources (DNR) farm runoff standards, also known as the agricultural performance standards adopted in ch. NR 151, Wis. Adm. Code (NR 151). Chapter 92, Stats., establishes the framework for DATCP to operate a statewide program that includes implementation of farm conservation practices, approval of county land and water resource management plans, administration of soil and water resource management grants, oversight of

manure storage and other local regulations covering livestock operations, provision of training and engineering practitioner certification, and standards for cost-sharing practices. Through ch. ATCP 50, Wis. Adm. Code (ATCP 50), DATCP carries out these responsibilities. Among other things, ATCP 50 ensures that implementation of the farm runoff standards is contingent on cost-share requirements (see s. ATCP 50.08).

Related Statutes and Rules

As explained above, this rule is related to s. 281.16, Stats., and NR 151. Chapter 92, Stats., establishes the framework for DATCP to operate a statewide soil and water resource management program. This rule also implements the soil and water conservation requirements in subch. V of ch. 91, Stats.

Plain Language Analysis

Background

ATCP 50 is being revised primarily to implement the new and modified farm runoff control standards adopted by the DNR in 2011. These new and modified DNR standards (referred to as “2011 DNR standards”) require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (TMDLs). Under state law, DATCP is responsible for developing conservation practices and other components to implement performance standards for farms. In most cases, farmers cannot be required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing.

Other changes in the rule are designed to improve administration of the SWRM program, including grants management, cost-sharing and establishing qualifications of engineering practitioners certified under the program.

Rule Content

Among other things, this rule will:

- Update the farm conservation standards in subch. II of ch. ATCP 50, and related definitions, including updates to the RUSLE 2 definition.
- Define a method for determining the distance between 5 and 20 feet for a tillage setback.
- Revise the soil erosion control standard to include pastures.
- Modify nutrient management planning requirements for pastures, including a phase-in process to address high risk areas.
- Clarify the conservation compliance requirements for the farmland preservation program, including a phase-in of the farm runoff standards updated in NR 151.
- Simplify the manner by which engineering practitioners are certified.

- Update the technical and other standards for practices cost-shared with state funds.
- Better support implementation of performance standards on farms.

The following provides more detailed analysis by subchapter.

Soil and Water Conservation on Farms

Farm Conservation Practices

To implement the 2011 DNR standards, this rule modifies the farm conservation practices as follows:

- *Soil Erosion Control.* This rule requires farmers to manage pastures as well as cropland so that soil erosion rates do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 2 to 5 tons of soil loss per acre per year. The rule also clarifies how soil erosion is calculated in the case of wind erosion. The RUSLE 2 equation, as defined in the rule, must be used to measure sheet and rill erosion and NRCS Wind Erosion Prediction System (WEPS) model to measure wind erosion.
- *Nutrient Management and Phosphorus Index.* This rule clarifies the process for annual review of all nutrient management plans to ensure that updates are prepared when needed. It also defines how nutrient management planning will be implemented for pastures by expanding the nutrient management standard to include pastures, and establishes a phase-in period for implementation. Within three years of the effective date of the rule revision, nutrient management plans are required in high risks areas. By 2020, all pastures must have nutrient management plans subject to cost-share requirements. To facilitate implementation of the Phosphorus Index, this rule references the most current tool for calculating soil loss, RUSLE 2.
- *Tillage Setback.* This rule defines the method for calculating a setback over 5 feet but less than or equal to 20 feet.
- *Process Wastewater.* This rule implements this new performance standard by adding a standard for cost-sharing in subch. VIII.

Subject to the cost-share requirements in this rule, which remain unchanged, landowners must implement these new farm conservation practices to achieve compliance with the 2011 DNR standards. As part of this rule revision, however, DATCP plans to phase-in compliance with the 2011 DNR standards for landowners who claim Farmland Preservation Program (FPP) tax credits. This phase-in will enable farmers to plan in advance for necessary changes in conservation practices on their farms, and allow an orderly transition for counties from a system focused on implementation of the original performance standards (adopted by DNR in 2002) to the new standards (adopted by DNR in 2011).

This rule continues to allow farmers to choose the best way to comply with this rule. A farmer may choose between conservation practices that are appropriate for his or her farm, as long as

those practices achieve compliance. In creating a cost-share standard for feed storage runoff control systems, this rule includes a note that explains the options to address a feed storage discharge, pointing out that farmers' choices may be affected by whether they receive state and other cost-sharing funds intended to achieve long-term prevention and other conservation objectives. Farmers continue to have access to a range of resources such as DATCP, UW-Extension, NRCS and the county land and water conservation departments to secure technical assistance.

Cost-Sharing Required

DATCP has not changed the requirement for cost-sharing availability when a landowner is required to install conservation practices that change "existing" agricultural facilities or practices. However, the DNR rule revision in 2011 changed the definition of "existing" and "new" agricultural facilities and practices for cost-share purposes. DNR's rule did make changes in cost-sharing requirements in certain cases where landowners must close unused manure storage structures. This rule changes the cost-sharing provisions for landowners installing conservation practices in non-farm settings.

County Soil and Water Conservation Programs

Farmland Preservation; Conservation Standards

In addition to addressing 2011 DNR standards, this rule incorporates the changes to the conservation compliance requirements for FPP to reflect the passage of the Working Lands Initiative in 2009 Act 28, the state's 2009-2011 biennial budget (codified primarily in ch. 91, Stats.). The key changes are as follows:

- This rule ensures that a farmer's eligibility is based on meeting state conservation standards that mirror DNR performance standards and prohibitions, except that this rule phases in implementation of the 2011 DNR standards for FPP participants, making them effective as of 2016.
- Landowners with pre-2009 agreements are only required to meet the conservation requirements specified in their agreements, as under prior laws.
- The concept of compliance is defined. Landowners must comply with state standards on the farm, as defined in this rule, not just the land for which they are claiming a tax credit. However, landowners can remain in compliance with the nutrient management standard when they add or convert land as long they update their plans in a timely manner. A livestock or cropping activity may be treated as part of one farm operation if certain conditions exist. For example, if a farmer conducts activities on the same tax parcel or adjacent tax parcels of land, a county may evaluate all relevant parcels to determine compliance on a farming operation. To streamline county recordkeeping for DATCP monitoring purposes, the rule establishes minimum requirements for documenting county compliance determinations.
- Landowners may continue to claim tax credits if they enter into performance schedules (previously "compliance schedules") with the county and make reasonable progress in

implementing farm conservation practices identified in the schedule. Schedules may provide landowners with as many as five years to achieve compliance.

- Counties have expanded responsibilities related to compliance monitoring, including more detailed standards for entering into performance schedules with farmers. County authority is clarified to include farm inspections. Counties must review a farmer's compliance at least once every 4 years, not 6 years as previously required.
- Counties must issue certificates of compliance to enable farmers to fulfill the documentation requirements in the tax law, and may issue certificates to create a record of compliance.
- As in the past, a county may issue a notice of noncompliance if it finds that a program participant is not complying. Now counties have the option to issue a notice if the landowner wishes to "refrain from collecting a tax credit," in addition to notices issued based on a failure to meet program requirements. This rule explains the need for counties to exercise sound judgment in handling of critical aspects related to monitoring conservation compliance on farms, including treatment of non-compliance and the issuance of notices of non-compliance.

Grants to Counties

Currently, DATCP must follow an annual allocation process to award grants to counties, including extensive procedures for revising the allocation plan. Allocation decisions are made according to priorities and other criteria, which are slightly changed by this rule to place greater emphasis on statewide priorities. This rule also simplifies the process for revising the allocation plan related to transfers and reallocations as noted below.

Annual Staffing Grants to Counties

This rule codifies a past decision by DATCP to waive the minimum staffing grant of \$85,000 per county, ensuring that DATCP funding is used to support the county's actual costs for staff. To ensure that counties spend most of their allocation on staffing costs, this rule caps reimbursements for support costs. This rule also modifies the criteria DATCP uses to set priorities for making grant awards. Reflecting the end of the priority watershed program, obsolete procedures and references to that program have been removed.

Grants for Conservation Practices

This rule codifies a past decision by DATCP (through a rule waiver) to reinstate cost-sharing to resolve notices of discharge and notices of intent issued by DNR for discharges from livestock operations. It also formalizes procedures for the voluntary transfer of cost-share funds between two counties, or the award of grants from a reserve established in the original allocation plan. In regard to requests for extensions of projects, this rule simplifies the process for making requests and allows DATCP to accept requests for extensions received before February 15th of the subsequent grant year if good cause is demonstrated. Consistent with waivers issued by DATCP, this rule allows extended cost-share funds to be pooled and used for any extended project in the county, and also allows non-county project cooperators to request a one year extension to spend their grant funds.

Cost-Share Grants to Landowners

This rule makes changes to support improved compliance with farm conservation practices by focusing the use of cost-share funds. Specifically, it excludes use of cost-sharing on land owned by state and local governments, and limits cost-sharing for certain practices that are not required to implement performance standards and prohibitions on farms, and clarifies that economic hardship is not available to non-farm landowners.

It also adds details to the procedures for recording cost-share contracts, including the timing for recording, the use of department grant funds to cover recording costs, and elimination of the requirement to record contracts involving nutrient management and other soft practices.

Soil and Water Professionals

Conservation Engineering Practitioners

Under s. 92.18, Stats., the department is directed to establish, to the extent possible, requirements for certification in conformance with the federal engineering approval system. This rule creates a more flexible and responsive framework for certifying engineering practitioners that better matches the federal system, and ultimately ensures maximum capacity for design and installation of farm and other conservation practices. In place of a list of practices prescribed by rule, this rule allows DATCP to grant certification for any practice authorized by NRCS and DNR as long as DATCP follows a public process specified in the rule to modify the list of practices for which certification may be provided. Less complicated than a rule revision, this new process allows for public review and comment before DATCP changes the certification standards and the related form.

To improve coordination of the evaluation and rating of applicants, this rule allows DATCP to designate a state conservation engineer, to function similarly to the NRCS state engineer. Under this revamped framework, certification will likely include non-agricultural practices, and accordingly the certification designation has been changed from “agricultural” to “conservation” engineering practitioner.

This rule also imposes restrictions on the use of this certification authority to sign engineering documents, thus preventing one person from certifying all facets of a project including design, review and approval.

Nutrient Management Planners

This rule recognizes that DATCP may develop minimum standards for department-approved training courses for farmers who develop their own nutrient management plans.

County and Local Ordinances

This rule adds provisions to ensure compliance with the requirements of the livestock facility siting law (siting law). See s. 93.90, Stats., and ch. ATCP 51, Wis. Admin. Code. It makes clear that counties can enforce water quality standards in a siting permit even if cost-sharing is not provided. Consistent with the siting law, a county cannot require a permit under its manure storage ordinance if it also requires a facility to obtain a permit under a siting ordinance.

The standards for manure storage ordinances have been updated to reflect changes in the management of manure, including the use of storage for non-manure wastes such as feed leachate and milking center waste, and revisions of applicable technical standards to reflect those changes.

Regarding more stringent local regulation, this rule describes requirements imposed under the siting law to implement local ordinances with these additional provisions.

Standards for Cost-Shared Practices

This rule adds these general provisions that apply to all cost-shared practices:

- Expansion of the concept of voluntary use of updated technical standards, an option first adopted in ATCP 50 in 2007 in connection with the nutrient management performance standard. Under this procedure, a landowner or grant recipient may agree to use updated NRCS or DNR standards as a part of cost-shared project if certain conditions are satisfied (e.g. the newer standard is at least as protective of the environment as the referenced standard).
- A process that allows DATCP to require advance approval of a practice design in special cases before any county can receive a cost-share reimbursement for installation of the practice.

In addition to updating NRCS and other technical standards incorporated into this subchapter, this rule:

- Creates a standard for cost-sharing systems to control discharges of feed storage leachate to complement the cost-share standard to address discharges of milkhouse wastewater (see s. ATCP 50.77).
- Clarifies the responsibility of a landowner to maintain the storage capacity of the original storage facility cost-shared by DATCP, if animal units are added during the maintenance period of the manure storage cost-share contract.
- Recognizes the use of a limited set of practices such as access roads and streambank and shoreline protection in non-farm contexts, but imposes restrictions to prevent misuse of limited state cost-share funds (e.g. access roads cannot be used to pay for road building for public use).
- Separates cattle crossings from access roads as a cost-shareable practice and creates a new standard for "stream crossing."
- Eliminates heavy use area protection as a separate cost-shareable practice and allows this practice only as a component of other practices such as barnyard runoff control systems.

- Provides more flexibility to cost-share pesticide spill control structures without the requirement of a pesticide management plan in all cases.
- Better defines structural and bioengineering treatments that are cost-shareable under streambank or shoreline protection and makes other changes to the standard.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general to incorporate the following standards by reference in this rule:

- NRCS technical guide standards and related documentation.
- ASCE and other private sector-developed engineering practice standards.
- State agency (DNR, DOT) erosion control standards for construction sites and stormwater management.
- UW-Extension publications including milking center waste water management, rotational grazing, and soil and manure testing.
- NRCS standards for determining soil erosion (RUSLE 2, WEPS).

Copies of these standards will be on file with DATCP and the legislative reference bureau. DATCP has discontinued the practice of including key documents as appendices and will utilize its website to indicate where documents may be obtained.

Waivers

DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Land and Water Conservation Board

The land and water conservation board has reviewed this rule as required by s. 92.04(3)(a), Stats.

Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations

NRCS has adopted standards for conservation practices cost-shared by NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices cost-shared with DATCP funds. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent on cost-sharing (there are limited exceptions).

While NRCS sets national standards, standards vary, to some extent, between states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin's soil and water conservation program, DATCP may incorporate NRCS standards as written or may modify the standards as appropriate. This rule will modify current DATCP rules

that incorporate NRCS standards by reference. This rule may incorporate updated NRCS standards, or may modify NRCS standards to make them more clear or workable in Wisconsin's soil and water conservation program. It will allow landowners receiving cost-sharing to voluntarily take advantage of new NRCS standards not yet incorporated into rule, thereby ensuring that they get the most value for their investment in practices.

NRCS certifies engineering practitioners who design, install or approve conservation engineering practices cost-shared by NRCS. DATCP certifies practitioners who perform similar functions under DATCP rules. As noted above, this rule makes changes to better match the state and federal programs, which ultimately will benefit the landowners who rely on technical services from engineering practitioners.

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program (EQIP) is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and other conservation practices. As a result of confidentiality requirements, federal cost-sharing provided to landowners through this and other NRCS cost-share programs cannot be publicly disclosed. Without accurate historical data about past use of NRCS cost-sharing to implement state conservation standards, it is difficult to account for the role these funds may play in the future.

Other programs, such as the Conservation Reserve Program (CRP) and the Conservation Reserve Enhancement Program (CREP) also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state programs for conservation funding with relevant federal programs.

Comparison with Rule in Adjacent States

This comparison examines how surrounding states are addressing issues related to the 2011 DNR standards, with particular focus on the implementation of such standards through farmland preservation activities. In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the phosphorus index in some form but none use it in the same manner as NR 151 provides. For example, phosphorus management strategies in Michigan are implemented as part of the state's Generally Accepted Agricultural and Management Practices (GAAMPs). Wisconsin's approach differs from the programs in adjacent states in that it has more detail in its phosphorus index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost-sharing must be made available to existing agricultural operations before the state may require compliance with the standards. Cost-sharing is often tied to compliance responsibilities in adjacent states, but there are instances where farmers must meet standards other than the phosphorus index as part of regulatory programs.

Illinois

Using a different framework and programming, Illinois implements several standards similar to those adopted in Wisconsin. In addition to implementing a phosphorus index for large livestock operations, Illinois encourages the equivalent of a tillage setback for croplands through a property tax incentive related to the construction of livestock waste management facilities. This incentive applies to the installation of vegetative filter strips in cropland that is surrounding a surface-water or groundwater conduit. Illinois law does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state.

While Illinois has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Iowa

Like Illinois, Iowa requires that nutrient management plans for livestock operations of 500 or more animal units be based on the phosphorus index. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharges to waters of the state, polluting waters of the state and discharge to road ditches. Medium-sized livestock operations are required to install runoff controls to eliminate discharges of process wastewater into waters of the state. See Iowa's website at:

http://www.iowadnr.gov/portals/idsnr/uploads/afo/fs_desncriteria_medcafo.pdf

While Iowa operates a county-based statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Michigan

Michigan relies on GAAMPs [see *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* (January 2012)] to support the Michigan Agriculture Environmental Assurance Program (MAEAP), which includes a compliance verification process that ensures nuisance protection to farmers under Michigan's Right to Farm law. GAAMPs covers standards similar to those in Wisconsin including standards for process wastewater and pasture management. These standards are implemented as part of the state's right to farm law and its complaint investigation program. The state assesses problems identified through complaints, and farmers must take corrective action to earn nuisance protection under the right to farm law.

Michigan does not require a separation distance between tillage activities and waterbodies. The state's regulatory requirements regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

While Michigan has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements

Minnesota

Minnesota implements a variation of a tillage setback in limited settings, requiring a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD5 (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD5. State and local officials work with pasture owners to prevent and abate water quality violations (Minn. R. ch. 7050 and 7060) that may be created by sediment or nutrient runoff from poorly managed pastures.

Under its feedlot program, Minnesota imposes mandatory requirements on about 25,000 registered feedlots. This program requires feedlot owners, ranging in size from small farms to large-scale commercial livestock operations, to “register with the MPCA, and meet the requirements for runoff discharge, manure application and storage, and processed wastewater.”

While Minnesota has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP participated in the DNR advisory group convened as part of the revision of NR 151, worked with DNR to achieve a revision of NR 151 consistent with statutory framework and the interests of regulated groups and other stakeholders, informally worked with interest groups including organizations representing farm groups, environmental groups, and government entities such as county land and water conservation departments, conducted listening sessions with affected parties to secure input, and prepared an assessment of the business impacts using DNR’s assessment and a methodology similar to the one used for the 2002 nonpoint rule revision.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

In preparing its analysis and supporting documentation, the department consulted with stakeholder groups, reviewed rule documents developed by DNR related to the adoption of 2011 DNR standards, including revised fiscal estimate and final rule order, and estimated costs using a methodology similar to the one used for the 2002 nonpoint rule revision.

Effects on Small Business

Most impacts of this rule will be on farmers, a great majority of whom qualify as “small businesses.” The analysis of the impacts on farms takes into consideration the following factors:

- The proposed rule does not add standards for farms. Those were created by DNR in 2011, but focus on implementation of DNR’s standards. DNR’s analysis of the 2011 standards was consulted.
- In its implementation of the 2011 DNR standards, this rule includes measures intended to minimize the financial impacts on farmers, including a phase-in of the nutrient management requirements for pasture, and limitations on increasing the tillable setback over 5 feet.
- Most farmers will be insulated from some of the costs of implementation by the state’s cost-share requirement and the limited state funding available to provide cost-sharing.
- For farmers receiving farmland preservation tax credits, this rule provides farmers flexibility to minimize the financial impacts related to compliance (which range from \$8 to \$12 million state-wide), including a delay in the effective date for compliance with the 2011 DNR standards, the use of performance schedules, pursuit of cost-sharing for which they are eligible, use of a tax credit to offset some implementation costs, or if needed, withdrawal from the farmland preservation program to avoid unmanageable costs.

The proposed rule changes will have small, but positive impacts on businesses other than farmers. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices. The *Initial Regulatory Flexibility Analysis*, which will be filed with this rule, provides a more complete analysis of this issue.

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Place Where Comments are to be Submitted and Deadline for Submission

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 **SECTION 1.** ATPC 50.01 (2m) is created to read:

2 ATPC 50.01 (2m) "Contaminated runoff" means drainage that has come through or
3 across a feed storage or manure storage area. "Contaminated runoff" includes the fluid and any
4 sediment, manure, feed or other material carried in the fluid. "Contaminated runoff" contains
5 lower concentrations of contaminants than leachate from feed or manure.

6 **SECTION 2.** ATPC 50.01 (11) is repealed.

7 **SECTION 3.** ATPC 50.01 (15m) is created to read:

8 ATPC 50.01 (15m) "Leachate" means the concentrated liquid which has percolated
9 through or drained from animal feed or manure storage areas. "Leachate" contains much higher
10 concentrations of contaminants than contaminated runoff.

11 **SECTION 4.** ATPC 50.01 (17) is amended to read:

12 ATPC 50.01 (17) "Local governmental unit," ~~as used in s. ATPC 50.60,~~ has the meaning
13 given in s. 92.15 (1) (b), Stats., and includes a county, town, city, village, lake district and county
14 drainage board.

15 **SECTION 5.** ATPC 50.01 (18) (a) is amended to read:

16 ATPC 50.01 (18) (a) Soil and water conservation standards that a county land
17 conservation committee adopts under s. ~~92.105~~92.07(2), Stats.

18 **SECTION 6.** ATPC 50.01 (18) (a) (Note) is repealed.

19 **SECTION 7.** ATPC 50.01 (18) (b) and (c), and (20) are amended to read:

1 ATCP 50.01 (18) (b) An ordinance or regulation that a county adopts under s. 59.69,
2 59.692, 92.07 (2), 92.11, 92.15, 92.16 or , 92.17 or 93.90, Stats.

3 (c) An ordinance or regulation that a town, city or village adopts under s. 92.11, 92.15,
4 92.16 or , 92.17 or 93.90, Stats.

5 (20) "Manure" means livestock excreta. "Manure" includes livestock the following
6 when intermingled with excreta in normal farming operations: debris including bedding, water,
7 soil, hair, and feathers; processing derivatives including separated sand, separated manure
8 solids, precipitated manure sludges, supernatants, digested liquids, composted biosolids and
9 process water; and other debris that becomes intermingled with livestock excreta in normal
10 manure farming operations runoff collected from barnyards, animal lots and feed storage areas.

11 SECTION 8. ATCP 50.01 (27) (Note) is amended to read:

12 **Note:** Copies of the NRCS technical guide are on file with the department and the
13 legislative reference bureau. Copies of individual standards contained in the
14 NRCS technical guide may be obtained from ~~the a~~ county land conservation
15 ~~committee or from department,~~ an NRCS field office. ~~This chapter incorporates,~~
16 ~~by reference, various NRCS technical guide standards. See Appendix G, the~~
17 ~~national NRCS website at: <http://www.nrcs.usda.gov/>, or Wisconsin NRCS~~
18 ~~website at: <http://www.wi.nrcs.usda.gov/>.~~

19
20 SECTION 9. ATCP 50.01 (29m) is created to read:

21 ATCP 50.01 (29m) "Pasture" has the meaning given in s. NR 151.015 (15m).

22 SECTION 10. ATCP 50.01 (31) (a) and (b) are amended to read:

23 ATCP 50.01 (31) (a) Except as provided in par. (b), the release that was in effect on
24 November 14, 2006 [LRB inserts date].

25 (b) For purposes of a compliance determination under ch. NR 151 or this chapter made
26 prior to November 14, 2006 [LRB inserts date], the release that was in effect on the date of the
27 compliance determination.

1 **SECTION 11.** ATCP 50.01 (33) is amended to read:

2 ATCP 50.01 (33) "State regulation" means chs. 88, 91, 92, 93, 281 or 283, Stats.

3 **SECTION 12.** ATCP 50.04 (1) is amended to read:

4 ATCP 50.04 (1) **NONPOINT SOURCE POLLUTION CONTROL.** A landowner shall implement
5 conservation practices that achieve compliance with DNR performance standards under ss. NR
6 151.02 to 151.08, in effect on [LRB inserts date].

7 **SECTION 13.** ATCP 50.04 (1) (Note) is created to read:

8 **Note:** Landowners who claim farmland preservation tax credits must comply with
9 conservation standards as required under s. 91.80, Stats.

10 **SECTION 14.** ATCP 50.04 (2) and (Note), (3) (a), (b), (dm) 1. (Note), (e) (Note), (f)
11 (intro.) and (f) 4. (Note) are amended to read:

12 ATCP 50.04 (2) ~~CROPLAND SOIL~~ SOIL EROSION CONTROL. A landowner shall manage
13 croplands, pastures, and ~~cropping related~~ practices so that soil erosion rates on cropped and
14 pastured soils, ~~determined according to RUSLE 2 equation~~, do not exceed T-value.

15 **Note:** See s. 92.025 (1), Stats., and s. NR 151.02. Soil erosion includes erosion caused
16 by wind or water. For most soils, "T-value" is equivalent to 3 to 5 tons of soil
17 loss per acre per year.

18
19 ~~The Sheet and rill soil erosion from water is calculated according to the RUSLE 2~~
20 ~~equation is, published by NRCS, and is available from NRCS. Wind erosion is~~
21 ~~calculated according to the NRCS Wind Erosion Prediction System (WEPS)~~
22 ~~model. Copies of RUSLE 2 and the NRCS WEPS model are on file with the~~
23 ~~department and the legislative reference bureau. Copies of both models may also~~
24 ~~be obtained from the NRCS website at: <http://www.wi.nrcs.usda.gov/technical/>.~~
25

26 (3) (a) A landowner shall have and follow an annual nutrient management plan when
27 applying nutrients to any field, including pastures, after the date specified in par. (h) or (hm). A
28 nutrient management plan shall comply with this subsection.
29

(b) The plan shall include every field on which the landowner mechanically applies nutrients, including pastures.

(dm) 1. **Note:** The NRCS technical guide standard 590 (September, 2005) and Wisconsin conservation planning technical note WI-1 ~~is~~ are on file with the department and the legislative reference bureau. Copies are available from your a county land conservation office or the following web address:
<http://datep.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmnt/planning.jsp> The NRCS technical guide standard 590 (September, 2005) is reproduced, without the companion technical note, in Appendix D department, a NRCS field office, the national NRCS website at:
<http://www.nrcs.usda.gov>, the Wisconsin NRCS website at:
<http://wi.nrcs.usda.gov/>, or the department website at:
[http://datep.wi.gov/Environment/Land and Water Conservation/Soil and Water Resource Management/ATCP50/index.aspx](http://datep.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx).

(e) **Note:** The A person may obtain a checklist in Appendix C may be used to gather information for a nutrient management plan NRCS technical guide nutrient management standard 590 (September, 2005) is reproduced in Appendix D. The Wisconsin conservation planning technical note WI-1 (September, 2007) is not reproduced in Appendix D but is on file with the department and the legislative reference bureau. Copies are available from your county land conservation office or the following web address:
<http://www.datep.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp> by visiting the department's website at:
[http://datep.wi.gov/Environment/Land and Water Conservation/Soil and Water Resource Management/ATCP50/index.aspx](http://datep.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx). To obtain a copy of Wisconsin conservation planning technical note W-1 (September, 2007), see sub. (3) (dm) 1. (Note).

(f) (intro.) The plan may not recommend nutrient applications that exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin-Extension in the 1998 edition of Soil Test Recommendations for Field, Vegetable and Fruit Crops, UWEX publication A-2809A2809, or in the latest subsequent edition of that publication if preferred by the landowner, unless the nutrient management planner can show that one or more of the following circumstances justifies the recommended application:

(f) 4. **Note:** Appendix B contains a convenient summary of recommendations in the The 1998 and subsequent editions of the UWEX publication A-2809A2809, for selected crops. You may obtain the complete publication and the summary are available from your a county extension agent. The complete publication is 1998 and 2012 editions are also on file with the department and the legislative reference bureau. The latest edition of A2809 is available from the UWEX website at: <http://learningstore.uwex.edu/>. Copies are also available from your county land conservation office or the following web address department website at: http://datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient_mngmt/planning.jsp. [http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water Resource Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx).

SECTION 15. ATPC 50.04 (3)(gm) is created to read:

ATPC 50.04 (3) (gm) The nutrient management plan shall be reviewed annually to determine whether the plan accurately reflects the planned cropping, tillage, nutrient application rates and application methods. The plan shall be updated, by a nutrient management planner qualified under s. ATPC 50.48, when necessary to reflect changes in those planned activities.

SECTION 16. ATPC 50.04 (3) (h) (intro.) is amended to read:

ATPC 50.04 (3) (h) (intro.) Paragraph (a) first applies on the following dates for the following nonpasture lands:

SECTION 17. ATPC 50.04 (3) (hm) is created to read:

ATPC 50.04 (3) (hm) Paragraph (a) first applies on the following dates for pasture lands:

1. [LRB inserts date three years from the effective date of the rule] for any portion of a pasture located:

a. Within 1,000 feet from the ordinary high water mark of navigable waters consisting of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, within 1,000 feet from the high water mark of the lake.

b. Within 300 feet from the ordinary high water mark of navigable waters consisting of a river or stream.

2. January 1, 2020 for other pastures.

SECTION 18. ATCP 50.04 (4) is created to read:

ATCP 50.04 (4) TILLAGE SETBACK. (a) A landowner shall manage cropland to achieve compliance with the DNR performance standards for tillage setback under s. NR 151.03.

(b) Any tillage setback area greater than 5 feet shall be determined by using best professional judgment to increase the setback by the smallest increment necessary to achieve the purposes of s. NR 151.03. In exercising best professional judgment, county and other conservation professionals shall do all of the following:

1. Consult with NRCS or department engineering specialists as required.
2. Consider bank materials, height, slope and other factors that affect bank integrity.

Note: Conservation practices such as critical area stabilization, grade stabilization and shoreland protection should be installed if necessary to stabilize the bank and protect its integrity. Determinations regarding compliance with this standard may be appealed as authorized under s. 227.42, Stats., or other provisions of law. Landowners may achieve compliance with this standard by enrolling riparian land in the CREP program or other federal set-aside programs.

SECTION 19. ATCP 50.08 (1) (intro.), (a) (Note) and (2) (Note) are amended to read:

ATCP 50.08 (1) (intro.) A landowner engaged in agricultural practices in this state is not required to do any of the following, under s. ATCP 50.04, unless the landowner receives a bona fide offer of cost-sharing.

(a) **Note:** Under DNR rules, a landowner is normally entitled to cost-sharing if the landowner is required to discontinue or modify cropping practices on “existing cropland” in order to comply with a DNR performance standard. Other cropland must comply with relevant DNR performance standards, regardless of the availability of cost-sharing. Under DNR rules:

- Land qualifies as “existing cropland” if it was being cropped on the effective date of the relevant DNR performance standard, and has never complied with that performance standard since that date.
- If cropland *complies* with a DNR performance standard after that standard takes effect, it no longer qualifies as “existing cropland” for cost-share

1 purposes under that performance standard. If the cropland later falls out of
2 compliance with the performance standard, the landowner must restore
3 compliance regardless of the availability of cost-sharing.

- 4 • Land not cropped on the effective date of a DNR performance standard, but
5 returned to cropping at a later date, may qualify as "existing cropland" if it is
6 returned to cropping within 10 years after cropping was halted.
- 7 • Cropland enrolled in a federal conservation program on October 1, 2002
8 qualifies as "existing cropland" when it comes out of the federal program
9 unless the cropland is re-enrolled.

10
11 A landowner may be *eligible* for cost-sharing, even if the landowner is not
12 *entitled* to cost-sharing under par. (a). A county has considerable discretion in its
13 use of department cost-share funds, subject to this chapter. See subch. V of this
14 chapter.

15
16 (2) **Note:** See ss. 92.07 (2), 92.15 (4) and 281.16 (3) (e), Stats. Subsection (1) requires a
17 bona fide offer of cost-sharing, not necessarily an acceptance. A county may
18 impose a reasonable deadline by which a landowner must accept or reject the
19 county's bona fide cost-sharing offer under sub. (1). See s. ATCP 50.54 (2)
20 related to cost-sharing for conservation practices required under a county or local
21 ordinance.

22
23 The minimum cost-share requirement under subs. (1) and (2) does *not* apply if a
24 landowner *voluntarily* installs a cost-shared practice. In a voluntary transaction,
25 the county is free to negotiate a grant amount with a landowner (up to the
26 *maximum* amounts provided in s. ATCP 50.42). But if a county *requires* a
27 landowner to install a conservation practice, the county must comply with
28 applicable cost-share requirements under subs. (1) and (2). The cost-share grant
29 may come from one or more sources, as provided under sub. (7).

30
31 If the practice is not being installed to achieve compliance with an agricultural
32 performance standard, the minimum cost-share requirement also does *not* apply.
33 See s. ATCP 50.42 (1).
34

35 **SECTION 20.** ATCP 50.10 (1) (b) and (Note) are amended to read:

36 ATCP 50.10 (1) (b) ~~County soil and water conservation standards, and a~~ A program to
37 implement these soil and water conservation standards.

38 **Note:** A county's land and water resource management plan under s. ATCP 50.12 should
39 identify the county's strategy to implement the farm conservation practices
40 required under s. ATCP 50.04. See Under s. ATCP 50.16 related to, a county is
41 required to monitor and ensure compliance with conservation standards for lands
42 covered by the farmland preservation program under ch. 91, Stats. See s. ATCP
43 50.14 and subch. VII related to county ordinances.

1
2 **SECTION 21.** ATCP 50.12 (2) (j) is amended to read:

3 ATCP 50.12 (2) (j) How the county will monitor and measure its progress under par. (i),
4 including the establishment of annual benchmarks that will achieve the plan goals and objectives.

5 **SECTION 22.** ATCP 50.12 (2) (jm) is created to read:

6 ATCP 50.12 (2) (jm) How a county will meet its responsibilities for monitoring
7 conservation compliance of landowners claiming farmland preservation tax credits.

8 **SECTION 23.** ATCP 50.16 (title), (1), (2), (3), (4) and (5) are repealed and recreated to
9 read:

10 **ATCP 50.16 Farmland preservation program; conservation standards compliance.**

11 (1) COMPLIANCE WITH STANDARDS REQUIRED. (a) Except as provided in par. (d) and sub. (2), a
12 landowner claiming farmland preservation tax credits shall comply with the DNR performance
13 standards and prohibitions in s. ATCP 50.04, as required in s. 91.80, Stats.

14 **Note:** The soil and water conservation standards are promulgated by the department
15 under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats.

16
17 (b) In determining landowner compliance under this section, the land conservation
18 committee shall base its determination on all of the following:

19 1. Whether the entire farm operation owned by the landowner is in compliance with all
20 the applicable conservation standards. The county may treat livestock locations and areas of
21 cropping activity as part of the same farm operation if the agricultural practices are conducted on
22 the same tax parcel or adjacent tax parcels of land.

23 2. Whether a review of available documentation at the county demonstrates the
24 landowner has no significant discharge from an animal lot, feed storage, manure storage, or other
25 livestock structure on the farm.

1 3. Whether a review of available documentation at the county demonstrates the
2 landowner has implemented a nutrient management plan in compliance with the nutrient
3 management standard in s. ATCP 50.04 (3) for all land where a plan is required on the farm.

4 (c) Once determined to be in compliance with the nutrient management standard in s.
5 ATCP 50.04 (3), a landowner shall remain in compliance with the nutrient management standard
6 on the farm acres, including on all of the following:

7 1. Acres on the farm converted to a new use as cropland or pasture if the new use is
8 included in the landowner's nutrient management plan in the year after the acres are converted to
9 the new use.

10 2. Acres added to the farm, if the new acres are included in the landowner's nutrient
11 management plan in the year after the acres are added.

12 (d) A landowner claiming farmland preservation tax credits shall comply with the
13 pasture requirement in s. NR 151.02, and ss. NR 151.03, 151.04 and 151.055, beginning on
14 January 1, 2016.

15 (2) EXCEPTIONS; FARMLAND PRESERVATION AGREEMENT PRE-JULY 2009. (a) Except as
16 required under par. (b), sub. (1) does not apply to landowners under a farmland preservation
17 agreement entered into prior to July 1, 2009. Landowners with these agreements claiming
18 farmland preservation tax credits under ss. 71.57 to 71.61, Stats., shall comply with the
19 standards, specified in the agreement, on the land specified in the agreement, as required in ss.
20 92.104 and 92.105, 2007 Stats.

21 (b) Landowners who modify a farmland preservation agreement entered into before July
22 1, 2009, pursuant to the provisions in s. 91.60 (3) (c), Stats., shall comply with the soil and water
23 conservation standards in effect at the time the agreement is modified.

1 (c) Landowners who enter into a farmland preservation agreement after [LRB insert
2 date] may be required, under the terms of that agreement, to comply with the pasture requirement
3 in s. NR 151.02, and ss. NR 151.03, 151.04 and 151.055 beginning January 1, 2016.

4 (3) PERFORMANCE SCHEDULE. (a) A county land conservation committee may enter into
5 a performance schedule with a landowner if all of the following apply:

6 1. The schedule, including amendments or extensions, does not allow the landowner
7 more than five years to achieve compliance with applicable conservation standards.

8 2. The landowner agrees in writing to specific farm conservation practices needed to
9 achieve compliance with the standards required under sub. (1).

10 3. The landowner agrees to a written plan to install farm conservation practices identified
11 in subd. 2. according to a specific schedule for completing the work.

12 4. The land conservation committee approves the performance schedule, including the
13 proposed practices and the time allowed to achieve compliance. The land conservation
14 committee may establish shorter periods to achieve compliance than the 5 year maximum
15 allowed under this subsection.

16 **Note:** A county should exercise sound judgment at critical junctures in its monitoring of a
17 farmer's conservation compliance, including its decision on the length of a
18 performance schedule, and its decision on how and when to respond to changes in
19 farmer compliance with applicable standards. The county may consider the
20 following in exercising its discretion: extenuating circumstances, such as adverse
21 weather conditions, that may affect a landowner's ability to comply; the nature
22 and seriousness of the landowner's non-compliance; the degree to which the
23 landowner has cooperated or taken actions to address concerns; the availability of
24 technical or other assistance; and the consistency of treatment among farmers in
25 the area. Before taking any compliance action, a county shall afford the
26 landowner notice and a reasonable opportunity to demonstrate compliance.
27

28 (b) A landowner meets the conservation standards under sub. (1) if the landowner is
29 either of the following:

1 1. In compliance with all soil and water conservation standards as required under s.
2 91.80, Stats.

3 2. Implementing a performance schedule that will achieve full compliance with those
4 standards within the period authorized under par. (a).

5 **Note:** A landowner is implementing a performance schedule if the landowner is making
6 reasonable progress in installing farm conservation practices, and taking other
7 appropriate actions in the time frame identified in the schedule as necessary to
8 achieve compliance.
9

10 (4) CERTIFICATE OF COMPLIANCE. (a) The county land conservation committee shall
11 issue a certificate of compliance to a landowner claiming tax credits under s. 71.613, Stats., if the
12 landowner meets the soil and water conservation standards as required by s. 91.80, Stats., and
13 this section. The certificate shall be issued on a form approved by the department.

14 **Note:** The county may obtain approval of its form by contacting the department at:
15 DATCPWorkingLands@wisconsin.gov.
16

17 The county may also issue certificates of compliance with soil and water
18 conservation standards in other situations if authorized by law.
19

20 (b) A certificate establishing a landowner's compliance with s. 91.80, Stats., and this
21 section remains in effect and valid until the county land conservation committee issues a notice
22 of non-compliance under sub. (6).

23 **Note:** A landowner who is issued a certificate of compliance may fall out of compliance
24 with a standard or fail to meet a standard applicable after the certification was
25 initially issued. A county, after reviewing the changes in the landowner's
26 compliance status, may consider issuing a notice of non-compliance. See Note
27 under sub. (3) (a) 4.
28

29 (c) A certificate of compliance may be amended or modified to reflect changes in a
30 landowner's status.

31 (5) MONITORING COMPLIANCE. A county land conservation committee shall monitor a
32 landowner's compliance with applicable conservation standards promulgated by the department

under ss. 92.05 (3) (c) and (k), 92.14 (8) and 281.16 (3) (b) and (c), Stats. A county shall perform all of the following activities:

(a) Inspect at least once every 4 years each farm for which the owner claims farmland preservation tax credits. At a minimum, an inspection shall include all of the following:

1. A site visit or other reliable assessment method to determine whether the farm has significant discharges from an animal lot, feed storage, manure storage, or other livestock structure on the farm.

2. A review of the owner's records to determine whether the farmer is implementing a nutrient management plan in compliance with the nutrient management standard in s. ATCP 50.04(3).

(b) Conduct other activities the committee deems appropriate for monitoring compliance, including any of the following:

1. A county land conservation committee may ask a landowner to certify, on an annual or other periodic basis, that the landowner is complying with the applicable conservation standards under sub. (1) or (2) and any performance schedule under sub. (3). A landowner shall certify compliance on a form provided by the committee.

2. A county land conservation committee may inspect farm sites and review documents and records to determine compliance with applicable land and water conservation standards.

(c) Maintain adequate documentation of county monitoring efforts and inspection activities to enable the department to perform the review required under s. 91.82 (1) (d), Stats., of the county land conservation committee's monitoring required under this subsection.

Note: Sub. (1) (b) 2. and 3. describe the minimum documentation that a county must maintain regarding farms subject to monitoring requirements and is intended to facilitate department monitoring of the counties. Counties are encouraged to

1 supplement documentation using their own systems including geographic
2 information systems tracking.

3
4 **SECTION 24.** ATPCP 50.16 (6) (a) 1. and 2. are amended to read:

5 ATPCP 50.16 (6) (a) 1. Failed to comply with applicable standards under sub. (1) or (2).

6 2. Failed to comply with a ~~farm conservation plan~~ performance schedule under sub.

7 (4)(3).

8 **SECTION 25.** ATPCP 50.16 (6) (a) 5. and (Note) are created to read:

9 ATPCP 50.16 (6) (a) 5. Stated an intent to voluntarily refrain from collecting tax credits
10 under subch. IX of ch. 71, Stats., and to waive the right to a hearing and farm inspection.

11 **Note:** Landowners with a farmland preservation agreement claiming the farmland
12 preservation tax credits under ss. 71.57 to 71.61, Stats., are required, under the
13 terms of that agreement, to comply with the applicable land and water
14 conservation standards.

15
16 **SECTION 26.** ATPCP 50.16 (6) (b) 1. is amended to read:

17 ATPCP 50.16 (6) (b) 1. The nature of the violation, ~~and a deadline date for curing the~~
18 ~~violation.~~

19 **SECTION 27.** ATPCP 50.16 (6) (b) 3. (Note) is created to read:

20 **Note:** A county should exercise sound judgment in deciding whether to take compliance
21 action under par. (b). See sub. (3) (a) 4. (Note).

22
23 **SECTION 28.** ATPCP 50.16 (6) (c) (intro.) and 2., and (d) are amended to read:

24 ATPCP 50.16 (6) (c) (intro.) ~~If a landowner receiving a notice under par. (a) fails to cure~~
25 ~~the violation by the deadline date specified in the notice, the~~ The county land conservation

26 committee shall issue a copy of the notice to all of the following:

27 2. The county planning and zoning committee if the land is covered by ~~an exclusive~~
28 ~~agricultural~~ a farmland preservation zoning ordinance.

(d) A county land conservation committee may, at any time, withdraw a notice of noncompliance issued under par. (a). The committee shall issue a notice of withdrawal on a form approved by the department. The committee shall give notice of the withdrawal to any agency under par. (c) that received a copy of the notice of noncompliance.

SECTION 29. ATCP 50.16 (6) (d) (Note) is created to read:

Note: The county may obtain a copy of the notice of noncompliance by contacting the department at:
http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx or calling (608) 224-4622.
The county may obtain approval of its notice of withdrawal of noncompliance by contacting the department at: DATCPWorkingLands@wisconsin.gov or by calling (608) 224-4622.

SECTION 30. ATCP 50.18 (1) (b) is amended to read:

ATCP 50.18 (1) (b) The county's progress toward the objectives identified in the county land and water resource management plan under s. ATCP 50.12, including the county's progress under its benchmarks. The report shall identify key areas of improvement, key compliance activities and key remaining program areas.

SECTION 31. ATCP 50.26 (2) (a) is amended to read:

ATCP 50.26 (2) (a) The activities for which the county seeks funding. These may include activities under this chapter, ch. 91, Stats., and s. 93.90, Stats., CREP program activities, and priority watershed activities previously funded under ch. NR 120 and projects funded by DNR under ss. 281.65 and 281.66, Stats.

SECTION 32. ATCP 50.26 (2) (a) (Note) is repealed and recreated to read:

Note: The department establishes priorities for funding based on the criteria in s. ATCP 50.30.

SECTION 33. ATCP 50.28 (5) (a) 1. is renumbered ATCP 50.28 (5) (a) 1. a.

1 **SECTION 34.** ATCP 50.28 (5) (a) 1. a. (Note) is renumbered ATCP 50.28 (5) (a) 1. b.

2 (Note) and amended to read:

3 **Note:** The department will normally grant funding extensions under subd. 1. by April 30
4 of each grant year, based on county and non-county extension requests filed by
5 December 31 of the preceding grant year. See s. ATCP 50.34 (6). Staffing grants
6 may not be extended into the next calendar year. Only non-county grants funded
7 under s. 20.115 (7) (qf), Stats., or other provisions authorizing the expenditure of
8 funds to non-county grant recipients, may be extended.

9
10 **SECTION 35.** ATCP 50.28 (5) (a) 1. b. is created to read:

11 ATCP 50.28 (5) (a) 1. b. Extend non-county grant recipient contracts funded but not
12 completed in the preceding grant year, provided that the non-county grant recipient requests the
13 extension by December 31 of the preceding grant year and the department has not previously
14 extended funding for the same contract from one grant year to another grant year. Extensions of
15 non-county grant contracts shall comply with s. ATCP 50.35.

16 **SECTION 36.** ATCP 50.28 (5) (a) 2. and 3. are amended to read:

17 ATCP 50.28 (5) (a) 2. Increase the total grant to any county. The department shall give
18 all counties notice and equal opportunity to compete for funding increases other than increases
19 due to extensions under subd. 1., voluntary transfers of cost-share funds from one county to
20 another county under subd. 5., and re-allocations of cost-share funds by the department under
21 subd. 2. from a reserve established in the annual allocation plan. The department shall make any
22 revisions in compliance with the requirements in par. (b).

23 3. Reduce a grant award to any county. The department shall give all counties notice and
24 an opportunity to comment for funding decreases other than those resulting from the voluntary
25 transfer of funds from one county to another county. The department shall make any revisions in
26 compliance with the requirements in par. (b).

27 **SECTION 37.** ATCP 50.28 (5) (a) 5. is created to read:

ATCP 50.28 (5) (a) 5. Approve the voluntary transfers of cost-share funds from one county to another county, or re-allocations of cost-share funds by the department from a reserve established in the annual allocation plan. Inter-county transfers shall comply with s. ATCP 50.34 (5m).

SECTION 38. ATCP 50.28 (5) (b) is amended to read:

ATCP 50.28 (5) (b) The department shall do all of the following before it revises an annual grant allocation plan, if required under par. (a):

SECTION 39. ATCP 50.28 (5) (b) 1. (Note) is repealed.

SECTION 40. ATCP 50.28 (5) (c) is created to read:

ATCP 50.28 (5) (c) The department shall notify the LWCB, no later than April 15 of the following year, of revisions made to the allocation plan based on transfers under par. (a) 5., re-allocations under par. (a) 4., and extensions of funds under par (a) 1. The department shall keep records regarding the disposition of each transfer, reallocation and extension requested.

SECTION 41. ATCP 50.30 (1) is amended to read:

ATCP 50.30 (1) The department shall give high priority to maintaining county staff and project continuity. The department shall consider county priorities identified in the county grant application under s. ATCP 50.26 and in the county's approved land and water resource management plan under s. ATCP 50.12, and shall balance funding these priorities with those in sub. (2).

SECTION 42. ATCP 50.30 (1) (Note) is created to read:

Note: The following county priorities may not be accorded the same weight as the statewide priorities in sub. (2) in making funding decisions: zoning administration (except as it relates to farmland preservation, livestock facility siting or administration of farm-related permits), septic system inspections, subdivision reviews, wildlife damage claims, invasive species control,

1 administration of non-soil and water conservation programs such as parks and
2 forestry management.

3
4 **SECTION 43.** ATCP 50.30 (2) (intro.), (b), (c) and (d) are amended to read:

5 ATCP 50.30 (2) (intro.) The department ~~may~~ shall give priority to county or non-county
6 projects that address statewide priorities identified by the department and DNR. These priorities
7 may include:

8 (b) Farms ~~for which the rate of cropland erosion is more than twice T-value that pose~~
9 significant environmental risks based on failure to comply with nutrient management and other
10 farm conservation standards.

11 (c) Farms discharging substantial pollution to waters of the state, including farms issued
12 a DNR notice of intent under s. 281.20, Stats., or a DNR notice of discharge under ch. NR 243.

13 (d) Farms claiming farmland preservation tax credits under subch. IX of ch. 71, Stats.,
14 and subject to the soil and water conservation requirements under subch. V of ch. 91, Stats.

15 **SECTION 44.** ATCP 50.30 (2) (e) and (f) are created to read:

16 ATCP 50.30 (2) (e) Projects related to the control of soil erosion and nonpoint source
17 pollution in which funding is based on the contribution of the activity to the overall pollution
18 problem.

19 (f) Project in which funding is coordinated among state agencies to maximize impacts in
20 targeted areas.

21 **SECTION 45.** ATCP 50.30 (3) (b), (g), (h) and (m) are amended to read:

22 ATCP 50.30 (3) (b) A county's demonstrated commitment and capacity to ~~implementing~~
23 implement and maintain the farm conservation practices required under s. ATCP 50.04.

24 (g) The timeliness and completeness of county grant plans, applications and ~~annual~~
25 reports.

1 (h) ~~The completeness and quality of county grant~~ degree to which plans, applications and
2 annual reports meet applicable criteria, including the adequacy of performance measures.

3 (m) The degree to which county activities ~~are consistent with~~ implement the county's
4 approved land and water resource management plan.

5 **SECTION 46.** ATPC 50.30 (3) (o) is renumbered (3) (r).

6 **SECTION .** ATPC 50.30 (3) (o) and (p) are created to read:

7 ATPC 50.30 (3) (o) The need for award caps or other cost control measures to maximize
8 funding available to meet conservation priorities or needs on agricultural lands.

9 (p) A county's commitment to meet department targets implementing the conservation
10 practices established in the annual grant application.

11 **SECTION 47.** ATPC 50.32 (3) (a) (Note) is amended to read:

12 **Note:** Soil and water resource management activities may include activities under this
13 ~~chapter and, ch. 91, Stats., and s. 93.90, Stats., the CREP program; activities~~
14 ~~related to "Priority watersheds" under ch. NR 120 and projects funded by DNR~~
15 ~~under ss. 281.65 and 281.66, Stats., and activities related to DNR notices of~~
16 ~~discharge under ch. NR 243.~~

17
18 A county may contract with engineers, nutrient management planners, computer
19 specialists, information and education specialists, consultants and other
20 independent contractors to work on behalf of the county land conservation
21 committee. A county may use annual staffing grant funds to pay for the services
22 of these independent contractors.
23

24 **SECTION 48.** ATPC 50.32 (3) (b) is amended to read:

25 ATPC 50.32 (3) (b) Training for county employees and land conservation committee
26 members to the extent authorized under sub. (3m).

27 **SECTION 49.** ATPC 50.32 (3m) is created to read:

ATCP 50.32 (3m) TRAINING COSTS. An annual staffing grant may pay for any of the following county employee and land conservation committee member training costs, including registration fees, travel and materials:

(a) Training in conservation planning and management, technical standards implementation, clerical assistance, computer usage, and communications.

(b) Courses building skills to perform current responsibilities or develop professionally in the field of soil and water management.

(c) Other training costs identified in the grant application for the grant year in which the funds are to be expended.

SECTION 50. ATCP 50.32 (5) (a) (Note) is amended to read:

Note: Subject to the availability of funds, the department ~~will normally~~ may offer each county ~~at least the a minimum staffing grant amount required in par. (b).~~ Additional staffing grant amounts, if any, ~~may be based on the country's annual financial contribution as last reported under s. ATCP 50.18 (1) (c).~~ But the department ~~may also consider other factors under~~ specified in the annual grant application. See s. ATCP 50.26. In lieu of offering a minimum grant award, or in addition to such an award, the department may base awards on the grant priorities in s. ATCP 50.30. The department has legal discretion to adjust grant awards from year to year, based on any of those factors.

SECTION 51. ATCP 50.32 (5) (b) is repealed and recreated to read:

ATCP 50.32 (5) (b) The total grant amount reimbursed to a county for training and support costs may not exceed 10% of a county's annual grant allocation.

SECTION 52. ATCP 50.32 (5) (b) (Note) is repealed.

SECTION 53. ATCP 50.32 (7) (a) (Note) is created to read:

Note: The department does not provide paper copies of its grant forms. To obtain the most current program grant forms, including the form to request reimbursement from the department, counties should refer to the program's working manual on the department website at:
<http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water Resource Management/ATCP50/index.aspx>.

1
2 **SECTION 54.** ATCP 50.32 (7) (b) is amended to read:

3 ATCP 50.32 (7) (b) ~~The county's chief financial officer~~ An authorized county
4 representative shall sign each reimbursement request. The request shall certify that the county
5 has fully paid the costs for which the county seeks reimbursement, and that those costs for which
6 the county seeks reimbursement, and that those costs are eligible for reimbursement under this
7 chapter and the grant contract.

8 **SECTION 55.** ATCP 50.32 (7) (c) 4. and (Note) are repealed and recreated to read:

9 ATCP 50.32 (7) (c) 4. The amount of applicable matching funds provided to cover the
10 county portion of salary and fringe benefits.

11 **Note:** Counties can use various funding sources to meet their match requirement,
12 including county levy, permit fees, private grants, federal grants, state funds other
13 than those under chs. 92, 281 and 283, Stats., or any other qualifying source.
14

15 **SECTION 56.** ATCP 50.32 (8) (b) and (c) 2. are amended to read:

16 ATCP 50.32 (8) (b) The department may reimburse eligible county employee training
17 and support costs at 100%, subject to sub. (5) (b).

18 (c) 2. The department may reimburse eligible costs for the county's first designated staff
19 person at 100%, ~~regardless of whether that person is a priority watershed staff person.~~

20 **SECTION 57.** ATCP 50.32 (8) (c) 3. is repealed.

21 **SECTION 58.** ATCP 50.32 (8) (c) 4. is amended to read:

22 ATCP 50.32 (8) (c) 4. Except as provided under subd. 2. ~~or 3.~~ the department may
23 reimburse eligible staffing costs at the rate prescribed in s. 92.14 (5g) (a), Stats.

24 **SECTION 59.** ATCP 50.34 (1) (b) is amended to read:

25 ATCP 50.34 (1) (b) State or local regulations identified in the county's land and water
26 resource management plan under s. ATCP 50.12 (2) (b). ~~The committee may not use funds under~~

1 this chapter to award cost-share grants for practices needed to comply with a DNR notice of
2 intent or notice of discharge under s. 281.20 or ch. 283, Stats.

3 **SECTION 60.** ATPC 50.34 (1) (b) (Note) is repealed and recreated to read:

4 **Note:** The committee may use funds for recording fees and other related costs allowed
5 under this chapter, but may not award funds under this chapter to cover state or
6 local permit fees.

7
8 **SECTION 61.** ATPC 50.34 (1) (d) is created to read:

9 ATPC 50.34 (1) (d) Any applicable requirements or provisions in ch. 92, Stats.

10 **SECTION 62.** ATPC 50.34 (3) (a) and (Note) are amended to read:

11 ATPC 50.34 (3) (a) File with the department a copy of the county's cost-share contract
12 with the landowner within 30 calendar days of full execution of the contract. The cost-share
13 contract shall comply with s. ATPC 50.40 (8) and (9).

14 **Note:** The department must specifically approve any cost-share contract that exceeds
15 \$50,000. See s. ATPC 50.40 (8).

16
17 **SECTION 63.** ATPC 50.34 (5m) and (Note) are created to read:

18 ATPC 50.34 (5m) INTER-COUNTY TRANSFERS. The department may approve an
19 agreement between counties to transfer uncommitted bond revenue or other cost-share funds if
20 all of the following apply:

21 (a) The grant funds subject to the transfer were not previously extended by the
22 transferring county.

23 (b) The county transferring the cost-share funds certifies to the department that it has an
24 uncommitted portion of its cost-share allocation equal to or greater than the transfer amount, and
25 has approval of its land conservation committee to make these funds available for transfer.

26 (c) The county receiving the cost-share funds has made a commitment to use the
27 transferred funds on a specific project, submits one or more cost-share contracts showing how the

1 transferred funds will be spent, and the proposed project meets a priority in the county's land and
2 water resource management plan.

3 **Note:** Transferred funds may be extended by the receiving county into the subsequent
4 grant year for the same project, subject to sub. (6).
5

6 **SECTION 64.** ATCP 50.34 (6) (a) 3. is amended to read:

7 ATCP 50.34 (6) (a) 3. The county land conservation committee files with the
8 department, by December 31 of the initial grant year, a written request ~~and justification for the~~
9 funding extension that identifies the cost-share projects for which the extended funds will be
10 used, and the total funds to be extended. The department may, for good cause, accept an
11 extension request filed between December 31 of the initial grant year and February 15 of the
12 subsequent grant year.

13 **SECTION 65.** ATCP 50.34(6) (a) 3. (Note) is created to read:

14 **Note:** Good cause may include the long-term absence or loss of critical staff, or the
15 damage or destruction of records.
16

17 **SECTION 66.** ATCP 50.34 (6) (b) is amended to read:

18 ATCP 50.34 (6) (b) A county may ~~not~~ transfer a funding extension under par. (a) from
19 one landowner cost-share contract to another provided that the department approves an extension
20 of both projects. Extended funds may not be used on new cost-share contracts. Extended
21 funding, if not spent for the designated cost-share contract in the year of the extension, remains
22 with the department for distribution under a future year's allocation plan.

23 **SECTION 67.** ATCP 50.35 is created to read:

24 ATCP 50.35 **Grants to non-county grant recipients.** (1) The department may award a
25 grant to a non-county grant recipient under s. 92.14 (10), Stats.

(2) Projects of non-county grant recipients funded with grants under s. 20.115 (7) (qf), Stats., or other provisions authorizing the expenditure of funds to non-county grant recipients, may be extended for a period of one year if the non-county grant recipient submits a written extension request by December 31 of the initial grant year, and identifies how the unspent funds will be used in the subsequent grant year.

SECTION 68. ATCP 50.40 (2) (d) and (Note) are amended to read: :

ATCP 50.40 (2) (d) Paragraph (a) does not apply to requirements imposed on a livestock facility operator in connection with a local approval or permit issued pursuant to s. 93.90, Stats., and ch. ATCP 51.

Note: To secure a local approval or permit, an operator must meet the required standards, regardless of whether the applicant receives cost-sharing (see s. 93.90, Stats.). However, a political subdivision may choose to provide cost-sharing to the operator.

SECTION 69. ATCP 50.40 (3) (a) (Note) is amended to read:

Note: A county may package cost-share payments in a variety of ways. For example, a county might choose to negotiate a single overall payment (sometimes called an "incentive" payment) with a landowner who voluntarily agrees to maintain a combination of "soft" practices ~~(such as, nutrient management, residue management and contour farming, for example)~~ as part of an overall farm ~~conservation plan~~. The county may pay the landowner to continue these practices, even though the landowner has followed the same practices in the past. In some cases, counties may be limited, by the terms of prior department grants for landowner cost-sharing, in making payments to landowners to continue compliance with performance standards. The county is free to negotiate the cost-share amount ("incentive" payment amount) with the landowner, as long as the arrangement is voluntary.

SECTION 70. ATCP 50.40 (3) (b) 12. to 14. are created to read

ATCP 50.40 (3) (b) 12. Pay for the installation of a practice on land owned by the state of Wisconsin, or any local governmental unit.

1 13. Bring a landowner with an existing WPDES permit into compliance with any
2 standards required under ch. 281, Stats.

3 14. Pay for any state or local administrative permit fees.

4 **SECTION 71.** ATPCP 50.40 (4) and (7) (b) are amended to read:

5 ATCP 50.40 (4) **ELIGIBLE COSTS.** A cost-share grant may pay for relevant costs identified
6 in s. ATPCP 50.08 (3) and (4), regardless of whether cost-sharing is required under sub. (2) or s.
7 ATPCP 50.08. A cost-share grant may pay for the costs incurred by a county or landowner in
8 recording, with the county register of deeds, any cost-share contract, whether or not recording is
9 required under s. ATPCP 50.40 (14). A cost-share grant may not pay for ineligible costs
10 identified under sub. (3) (b) or subch. VIII.

11 (7) (b) A cost-share grant may reimburse the cost of engineering services under par. (a)
12 provided by a professional engineer registered under ch. 443, Stats, or ~~an agricultural a~~
13 conservation engineering practitioner certified at the applicable rating under s. ATPCP 50.46. A
14 cost-share grant may not reimburse the cost of engineering services provided by the county land
15 conservation committee or its agent.

16 **SECTION 72.** ATPCP 50.40 (9) (c) 1. to 3. are repealed.

17 **SECTION 73.** ATPCP 50.40 (9) (c) (intro.), (d), and (j) (Note) are amended to read:

18 ATCP 50.40 (9) (c) The location of the land on which the cost-shared practice is to be
19 installed, and a specific legal description of the land if cost-share payments may exceed ~~the~~
20 following applicable amount: \$14,000.

21 (d) Specifications for the cost-shared practice, including engineering specification for any
22 ~~agricultural~~ conservation engineering practice identified under s. ATPCP 50.46 (2).

(j) **Note:** Subchapter VIII specifies a minimum maintenance period of 10 years for most conservation practices. But it does not specify a minimum maintenance period for the following “soft” practices:

- Contour farming (ATCP 50.67).
- Cover crop (ATCP 50.68).
- Nutrient management (ATCP 50.78).
- Pesticide management planning (ATCP 50.79).
- Residue management (ATCP 50.82).
- Stripcropping (ATCP 50.89).

SECTION 74. ATCP 50.40 (9) (L) 1. to 3. are repealed.

SECTION 75. ATCP 50.40 (9) (L) (intro.), (n) and (10) (b) are amended to read:

ATCP 50.40 (9) (L) If the contract provides for a cost-share grant that exceeds the following applicable amount \$14,000, an agreement that the contract runs with the land and is binding on subsequent owners or users of the land for the period of time required under subch. VIII.

(n) ~~An agreement that the Appropriate county land conservation committee must pre-approve, according to a procedure specified in the contract, pre-approval procedures for making~~ any construction changes that may affect the terms or amount of the cost-share grant.

(10) (b) Installed in compliance with applicable construction site erosion control standards contained in the DNR Wisconsin construction site best management practice handbook, DNR-Pub. WR-222 (April 1994) Storm Water Construction Technical Standards, in effect on [LRB insert date].

SECTION 76. ATCP 50.40 (10) (b) (Note) is repealed and recreated to read:

Note: A copy of these technical standards can be found at the DNR website at: <http://dnr.wi.gov/topic/stormwater/standards/index.html>. Copies of these technical standards are also on file with the department and the legislative reference bureau.

SECTION 77. ATCP 50.40 (11) (b) (intro), 2. and 3., are amended to read

1 ATCP 50.40 (11) (b) (intro) That the cost-shared practice is designed and installed
2 according to sub. (10). If the cost-shared practice is ~~an agricultural~~ a conservation engineering
3 practice identified under s. ATCP 50.46 (2), one of the following shall certify in writing that the
4 practice complies with sub. (10):

5 2. ~~An agricultural~~ A conservation engineering practitioner certified under s. ATCP
6 50.46.

7 3. A well driller or pump installer registered under s. 280.15, Stats., if the ~~agricultural~~
8 conservation engineering practice consists of well construction or decommissioning.

9 **SECTION 78.** ATCP 50.40 (14) (a), (b) and (c) are repealed.

10 **SECTION 79.** ATCP 50.40 (14) (intro.) is renumbered (14) (a) and amended to read:

11 ATCP 50.40 (14) (a) If a county contract with a landowner exceeds the ~~following~~
12 ~~applicable amount~~ \$14,000, the county or the landowner shall record the contract with the county
13 register of deeds before the county makes any cost-share payment to the landowner.

14 **SECTION 80.** ATCP 50.40 (14) (b), (c) and (d) and (Note) are created to read:

15 ATCP 50.40 (14) (b) If recording is required under this subsection, the county shall
16 record the cost-share contract before making any reimbursement payments to the landowner or
17 grant recipient.

18 (c) Recording a contract which exceeds the amount in par. (a) is not required if the
19 contract is only for conservation practices listed in s. ATCP 50.08 (5) (b).

20 (d) A county may choose to voluntarily record any contract in which cost-share
21 payments under this chapter were awarded.

22 **Note:** Cost-sharing funds can be used to record any contract authorized under this
23 chapter.
24

25 **SECTION 81.** ATCP 50.40 (17) is amended to read:

ATCP 50.40 (17) COMBINED GRANTS. Cost-share grants under this chapter may be combined with grants from other federal, state, local and private sources. ~~Department~~ Except as restricted under s. ATCP 50.42 (1), department funds allocated under this chapter may be combined with DNR funds allocated under s. 281.65 or 281.66, Stats., to finance up to 70% of the total cost of a project, or up to 90% in cases of economic hardship under s. ATCP 50.42 (4). This subsection does not limit the use of cost-share funds from other sources. A cost-share grant under this chapter may not reimburse a landowner for any costs that another governmental entity is also reimbursing.

SECTION 82. ATCP 50.42 (1) (a) (Note), (b) and (dm) are created to read:

ATCP 50.42 (1) (a) **Note:** The maximum cost-share rates in this section and other sections were established to meet the requirements of s. 281.16 (3) (e), Stats., which provides that an owner or operator of an agricultural facility may not be required by the state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards unless cost-sharing is available for at least 70% of the cost of compliance, or is 70% to 90% of the cost of compliance in cases of economic hardship. These maximum cost-share rates are not required for the practices specified in s. ATCP 50.42 (1) (dm).

(b) The economic hardship provision under sub. (4) is available to owners and grant recipients who operate farms and is not available to non-farmers.

(dm) The cost-share payments for the following conservation practices may not exceed 50% of the total eligible costs to install and maintain the practice unless the landowner is required to install the practice to achieve compliance with an agricultural performance standard on cropland, pastures or a livestock operation:

1. Access roads under s. ATCP 50.65.
2. Roof runoff systems under s. ATCP 50.85.
3. Streambank and shoreline protection under s. ATCP 50.88.
4. Stream crossing under s. ATCP 50.885.

1 5. Wetland development or restoration under s. ATCP 50.98.

2 **SECTION 83.** ATCP 50.42 (4) (intro.) is amended to read:

3 ATCP 50.42 (4) (intro.) **ECONOMIC HARDSHIP.** A landowner of a farm operation
4 qualifies for economic hardship treatment if all the following apply:

5 **SECTION 84.** ATCP 50.46 (title) is amended to read:

6 ATCP 50.46 (title) **Agricultural Conservation engineering practitioners.**

7 **SECTION 85.** ATCP 50.46 (1) and (2) are repealed and recreated to read:

8 ATCP 50.46 (1) **GENERAL.** (a) A conservation engineering practitioner certified under
9 this section, or approved under a parallel federal program identified in par. (b), may implement
10 the agricultural or other conservation engineering practices in ch. 92, Stats., or s. 281.65, Stats.,
11 and perform any of the following activities consistent with the person's level of certification
12 under this section:

- 13 1. Certify the design specifications for a conservation engineering practice under sub.
14 (2).

15 **Note:** A design certification typically involves the preparation or approval of a design
16 document that prescribes the installation of a conservation engineering practice.
17 The process typically requires the application of engineering principles and
18 methods, and may include several planning and design components. For example,
19 a practitioner may conduct a site inventory to gather data for the design process,
20 may identify or confirm particular water quality problems on the site, and may
21 evaluate the adequacy of the proposed practices to address those problems.
22

- 23 2. Certify that a conservation engineering practice has been installed according to an
24 approved design, and according to applicable standards and specifications.

- 25 3. Engage in planning review and other engineering functions related to the installation
26 of engineered conservation practices.

(b) NRCS administers a system of job approval ranking which authorizes persons to perform the functions identified in par. (a) at various levels of demonstrated expertise. The department shall operate its certification program under this section, to the extent possible, in conformance with the NRCS, or any other applicable federal agency system of job approval authority.

(c) For funding purposes under this chapter or ch. NR 120, no person, other than a conservation engineering practitioner certified under this section or a professional engineer registered under ch. 443, Stats., may certify that conservation practices were properly designed or installed in compliance with standards under this chapter or s. 281.65, Stats.

Note: See ss. 92.18 and 443.14 (10), Stats. Registered professional engineers, persons working under the direct supervision of registered professional engineers and employees of the NRCS may also seek certification under this section. A state or county employee certified under this section is exempt from the professional engineering registration requirements of ch. 443, Stats., when engaged in state or county activities under ch. 92, Stats., or s. 281.65, Stats., regardless of whether the activities are funded under this chapter.

Note: Notwithstanding sub. (1), a well driller or pump installer registered under s. 280.15, Stats., may certify a well construction or decommissioning under sub. (1).

(2) CONSERVATION ENGINEERING PRACTICES. For purposes of this section, a conservation engineering practice includes any of those practices identified in subch. VIII, authorized by the department under s. ATP 50.40 (3), allowed under s. 281.65, Stats., or approved and published, as part of the NRCS technical guide or as a formal technical standard by the DNR.

Note: The DNR publishes its technical standards on its website at, for example: <http://dnr.wi.gov/topic/stormwater/standards/index.html>.

SECTION 86. ATP 50.46 (2m) is created to read:

ATP 50.46 (2m) STATE CONSERVATION ENGINEER. The department may designate an employee as the state conservation engineer. The designated person shall be a professional

1 engineer registered under ch. 443, Stats., and demonstrate sufficient training and experience to
2 carry out the functions of the position. The state conservation engineer shall do all of the
3 following:

4 (a) Oversee the work of the field engineers who are responsible for certifying
5 conservation practitioners under this section.

6 (b) Conduct engineering activities requiring job approval authority ratings higher than
7 those authorized under this section including job class ratings of V and above.

8 **SECTION 87.** ATCP 50.46 (3) (title) is amended to read:

9 ATCP 50.46 (3) (title) ~~AGRICULTURAL~~ CONSERVATION ENGINEERING PRACTITIONER;
10 CERTIFICATION.

11 **SECTION 88.** ATCP 50.46 (3) (intro.) is renumbered (3) (a) and amended to read:

12 ATCP 50.46 (3) (a) A person who wishes to be certified as ~~an agricultural~~ a conservation
13 engineering practitioner shall apply to the department or a county land conservation committee.
14 An applicant may apply orally or in writing. The department or the county land conservation
15 committee shall promptly refer the application to the department's designated field engineer.
16 The field engineer shall evaluate the applicant and issue a decision granting or denying the
17 request.

18 **SECTION 89.** ATCP 50.46 (3) (b) and (Note), (c) and (d) are created to read:

19 ATCP 50.46 (3) (b) The department, in cooperation with NRCS, shall develop a form for
20 evaluating the certification level of applicants.

21 **Note:** A person may obtain a certification form by calling (608) 224-4622, by visiting
22 the department website at:
23 [http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water)
24 [Resource Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water) , or by writing to the following
25 address:
26

1 Wisconsin Department of Agriculture, Trade and Consumer Protection
2 Division of Agricultural Resource Management
3 P.O. Box 8911
4 Madison, WI 53708
5

6 (c) Prior to revising the certification form, the department shall do all of the following:

7 1. Publish proposed revisions on the department's website and other locations designed
8 to provide reasonable notice to the public and other interested parties.

9 2. Notify counties and other interested parties of the department's intent to revise the
10 form and provide access to the proposed revisions.

11 3. Allow a minimum of 30 calendar days for the public and other interested parties to
12 submit comments on the proposed revisions.

13 (d) Finalize the certification form after considering any comments received.

14 **SECTION 90.** ATCP 50.46 (4) (a) is amended to read:

15 ATCP 50.46 (4) (a) To evaluate an applicant under sub. (3), the department's field
16 engineer shall complete the a certification form shown in ~~Appendix E~~ provided by the
17 department. The field engineer shall rate the applicant under sub. (5) based on the applicant's
18 demonstrated knowledge, training, experience and record of appropriately seeking assistance.
19 Evaluations shall be fair and consistent.

20 **SECTION 91.** ATCP 50.46 (5) (a) (intro.), (a) 1. and 2. (Note), (6) (b), (7) (a), (9) (c) 2.
21 and (10) are amended to read:

22 ATCP 50.46 (5) (a) (intro.) For each type of agricultural or other conservation
23 engineering practice identified in ~~Appendix E~~ the certification form required under sub. (3), the
24 department's field engineer shall identify the most complex of the 5 job classes in ~~Appendix E~~
25 the certification form for which the applicant is authorized to do each of the following:

1 1. Certify that design specifications for jobs in that class comply with ~~standards under~~
2 ~~this chapter or~~ those identified in subch. VIII, authorized by the department under s. ATCP 50.40
3 (3), allowed by s. 281.65, Stats., or approved and published, as part of the NRCS technical guide
4 or as a formal technical standard by the DNR.

5 (a) 2. **Note:** The rating system under par. (a) is designed to be reasonably consistent with
6 the system used by NRCS under 7 CFR 610.1 to 610.5. ~~Appendix E is The~~
7 department will attempt to maintain its certification form in a manner similar to the
8 NRCS job approval delegation form. It identifies the controlling factors used to
9 determine the relative difficulty of job classes, as well as the NRCS standard that
10 applies. In cases where department field engineers may be required to provide a
11 job certification approval at a level higher than their own, they should consult with
12 a person who has appropriate certification in the areas being rated. A person who
13 is certified at a job level under par. (a) may certify his or her own work at that level
14 for any purpose including funding purposes under this chapter.

15
16 (6) (b) Whenever the department's field engineer certifies ~~an agricultural~~ a conservation
17 engineering practitioner, the field engineer shall issue a written certification in on the
18 department's certification form shown in Appendix E. The certification becomes effective when
19 signed by all of the following:

20 (7) (a) A department field engineer shall review each certification rating under sub. (5) at
21 least once every 3 years, and may review a rating at any time. A field engineer shall review a
22 rating whenever a certified ~~agricultural~~ conservation engineering practitioner requests that
23 review.

24 (9) (c) 2. State and federal agencies that provide cost-share funds for ~~agricultural~~
25 conservation engineering practices.

26 (10) CERTIFICATION GUIDELINES. The department may publish guidelines for the
27 certification of ~~agricultural~~ conservation engineering practitioners under this section. The
28 guidelines may include suggested or required courses, training activities, and types of knowledge

1 and experience that may help applicants qualify for certification at specified rating levels, or be
2 required in order to retain certification at certain rating levels.

3 **SECTION 92.** ATCP 50.46 (11) is renumbered (11) (a) and amended to read:

4 ATCP 50.46 (11) SIGNATURE AND DATE REQUIRED. (a) Whenever a person certified
5 under this section approves or submits for approval any document related to the design or
6 construction of ~~an agricultural~~ a conservation engineering practice under sub. (2), that person
7 shall sign and date that document.

8 **SECTION 93.** ATCP 50.46 (11) (b) is created to read:

9 ATCP 50.46 (11) (b) On any project approval documentation, a certified conservation
10 engineering practitioner may not sign and certify both the design specifications for the project,
11 and the review and approval of conservation practice installation. At least two separate certified
12 practitioners are required to sign the practice approval documentation. The person signing the
13 final design approval shall have the appropriate job class certification for each of the practices
14 used in the design. An engineer registered in the state of Wisconsin may be one of the
15 signatories on the project approval, or may sign the final design approval in place of a person
16 with job certification under this section.

17 **SECTION 94.** ATCP 50.46 (12) is amended to read:

18 ATCP 50.46 (12) SCOPE OF CERTIFICATION. No certified ~~agricultural~~ conservation
19 engineering practitioner may, for any purpose, including ~~funding purposes~~ under this chapter or
20 s. 281.65, Stats., certify any matter under sub. (5) (a) in a job class more complex than that for
21 which the practitioner is authorized under sub. (5) (a). In the event a practitioner exceeds the
22 authority authorized for certifying conservation practices, the department shall review the matter
23 and may take action under subs. (7) and (9).

1 **SECTION 95.** ATCP 50.48 (2) (a) 4. (Note) is created to read:

2 **Note:** The department may develop minimum standards for a department-approved
3 training course for farmers who develop their own nutrient management plans.

4
5 **SECTION 96.** ATCP 50.50 (2) (intro.) and (d) are amended to read:

6 ATCP 50.50 (2) (intro.) A laboratory operator may apply to the department for
7 certification under sub. (1). An operator shall submit a separate application, ~~using the form~~
8 ~~shown in Appendix A~~ on a form provided by the department, for each laboratory for which the
9 operator seeks certification. The application shall include all of the following:

10 (2) (d) The soil tests, test methods, and nitrogen estimation methods used by the
11 laboratory. The laboratory shall be capable of performing the following tests according to
12 methods prescribed by the University of Wisconsin-Extension in *Nutrient application guidelines*
13 *for field, vegetable, and fruit crops in Wisconsin*, UWEX Publication A2809 (2006~~2012~~), and by
14 the University of Wisconsin-Madison soil science department in *Wisconsin Procedures for Soil*
15 *Testing, Plant Analysis and Feed & Forage Analysis*, Soil Fertility Series (~~December, 2007~~)
16 (March, 2012), and shall be capable of estimating nitrogen levels based on those tests:

17 **SECTION 97.** ATCP 50.50 (2) (d) 5. (Note) is created to read:

18 **Note:** Copies of the *Nutrient application guidelines for field, vegetable, and fruit crops in*
19 *Wisconsin*, UWEX Publication A2809 (2012) and the *Wisconsin Procedures for*
20 *Soil Testing, Plant Analysis and Feed & Forage Analysis, Soil Fertility Series*
21 (March, 2012) are on file at the department and legislative reference bureau. To
22 obtain a copy of A2809, see s. ATCP 50.04 (3) (f) 4. (Note). Copies of the
23 Wisconsin Procedures publication are available at the University of Wisconsin
24 Extension website at: <http://uwlax.soils.wisc.edu/lab-procedures/>.

25
26 **SECTION 98.** ATCP 50.50 (2) (g) (Note) is amended to read:

27 **Note:** A list of approved soil testing laboratories can be found at the following web
28 address: ~~<http://www.datcp.state.wi.us/arm/agriculture/land->~~
29 ~~[water/conservation/nutrient-mngmt/planning.jsp](http://www.datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp)~~
30 [http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water](http://datcp.wi.gov/Environment/Land_and_Water/Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx)
31 [Resource Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water/Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx) or by calling (608) 224-4622.

1
2 SECTION 99. ATCP 50.50 (2) (g) (second Note) is created to read:

3 (second) Note: A person may obtain a copy of the soil test laboratory certification form
4 by visiting the department website at:
5 [http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50dex.aspx)
6 [Resource Management/ATCP50dex.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50dex.aspx) or by calling (608) 224-4622.
7

8 SECTION 100. ATCP 50.50 (4) (intro.) is amended to read:

9 ATCP 50.50 (4) (intro.) NUTRIENT RECOMMENDATIONS. If a certified laboratory
10 recommends nutrient applications to a landowner that exceed the amounts required to achieve
11 applicable crop fertility levels recommended by the University of Wisconsin Extension in ~~Soil~~
12 ~~Test Recommendations~~ *Nutrient application guidelines for Field, Vegetable and Fruit Crops in*
13 *Wisconsin*, UWEX publication ~~A-2809~~ A2809 (1998/2012), the laboratory shall make those
14 recommendations in writing and shall disclose all of the following in the same document:

15 SECTION 101. ATCP 50.50 (4) (c) (Note), (8) (b) (Note) and (c) (Note) are amended to
16 read:

17 ATCP 50.50 (4) (c) Note: ~~Appendix B contains a convenient summary of UWEX~~
18 ~~publication A2809, for selected crops. You may obtain the complete publication~~
19 ~~and the summary from your county extension agent. The complete publication is~~
20 ~~also on file with the department and the legislative reference bureau. For further~~
21 ~~information, see Appendix G. To obtain a copy of A2809, see s. ATCP 50.04 (3)~~
22 ~~(f) 4. (Note).~~

23
24 (8) (b) Note: The University of Wisconsin-Extension publication, *Recommended*
25 *Methods of Manure Analysis*, UWEX publication A3769 (2003), is on file with
26 the department and legislative reference bureau. Copies may be obtained from the
27 University of Wisconsin-Extension at the following address: University of
28 Wisconsin-Madison, Department of Soil Science, 1525 Observatory Drive,
29 Madison, WI 53706-1299 by visiting the UWEX website at:
30 <http://learningstore.uwex.edu>.

31
32 (c) Note: ~~The To obtain copies of the NRCS technical guide nutrient management~~
33 ~~standard 590 (September, 2005) is reproduced in Appendix D. The and the~~
34 ~~Wisconsin conservation planning technical note WI-1 is not reproduced in~~
35 ~~Appendix D but is on file with the department and the legislative reference~~
36 ~~bureau. Copies may be obtained from your county land conservation office or at~~

1 the following web address: <http://www.datep.state.wi.us/arm/agriculture/land->
2 [water/conservation/nutrient-mngmt/planning.jsp](http://www.datep.state.wi.us/arm/agriculture/land-), see s. ATCP 50.04 (3) (dm) 1.
3 (Note).
4

5 SECTION 102. ATCP 50.52 (1) (g) and (Note) and (2) (d) are amended to read:

6 ATCP 50.52 (1) (g) Issue training guidelines and requirements for certified agricultural
7 conservation engineering practitioners under s. ATCP 50.46 (10).

8 **Note:** The department guidelines may include suggested or required courses, training
9 activities, and the types of knowledge and experience that may help applicants
10 qualify for certification at specified rating levels, or be required in order to
11 maintain certification at certain rating levels.
12

13 (2) (d) The statewide association of representing land conservation committees and their
14 staffs.

15 SECTION 103. ATCP 50.52 (2) (e) is repealed.

16 SECTION 104. ATCP 50.54 (1) (Note) and (2) (b) are amended to read:

17 ATCP 50.54 (1) **Note:** "Local regulations" are defined in s. ATCP 50.01(18). Local
18 conservation requirements should be consistent with this chapter (see ss. 92.05 (1),
19 (3) (c) and (L), 92.07 (2), 92.11, 92.15 (2) to (4), 92.16, 92.17, 93.90 and 281.16
20 (3), Stats.). The department may review and comment on local regulations, as it
21 deems necessary. See specific requirements related to manure storage ordinances
22 (s. ATCP 50.56), agricultural shoreland management ordinances (s. ATCP 50.58)
23 and livestock ordinances (s. ATCP 50.60). A local regulation may not require a
24 livestock operator to obtain a license or permit for a new or expanding livestock
25 operation, except as specifically authorized under s. 93.90, Stats., and ch. ATCP
26 51. When exercising their approval authority under the livestock facility siting
27 law, political subdivisions are limited in their application of local manure storage
28 ordinances adopted under s. 92.16, Stats., and s. ATCP 50.56. (See s. ATCP 51.18
29 (6) (Note)).
30

31 (2) (b) Paragraph (a) does not apply to a nutrient management plan required under a
32 ~~permit for a manure storage system voluntarily constructed by a landowner.~~ any of the following:

33 SECTION 105. ATCP 50.54 (2) (b) 1. and 2. are created to read:

34 ATCP 50.54 (2) (b) 1. A permit for a manure storage system voluntarily constructed by a
35 landowner.

2. A permit required for a new or expanding livestock facility operation regulated under ch. ATCP 51.

SECTION 106. ATCP 50.56 (2) (e) and (f) are amended to read:

ATCP 50.56 (2) (e) ~~Abandonment~~ Closure provisions under sub. (4), if any.

(f) Conditions, if any, under which the county, city, village or town may require the ~~abandonment~~ closure of a manure storage system.

SECTION 107. ATCP 50.56 (3) is repealed and recreated to read:

ATCP 50.56 (3) CONSTRUCTION PROVISIONS. (a) An ordinance adopted under s. 92.16, Stats., shall establish requirements for constructing a new or modified manure storage system including storage and transfer components to handle manure.

Note: See s. ATCP 50.01 (20).

(b) The ordinance shall include provisions that do all of the following:

1. Prohibit construction of any part of a manure storage system without a permit from the county, city, village or town that adopts the ordinance.

Note: A local governmental unit may not require a manure storage permit for livestock facilities if it also requires the livestock facility to obtain a permit under the livestock siting law (s. 93.90, Stats.) for a new or expanded livestock facility. (See s. ATCP 50.54 (1) (Note)).

2. Require submission of a construction plan and “as built” documentation of the project demonstrating that the system was installed in accordance with technical standards.

Note: Unless the ordinance specifies otherwise, a permit would cover activities related to the construction of a facility, and not its operation and use.

Note: Ordinances should provide sufficient time for the local governmental unit to review engineering plans and specifications submitted by applicants. The timelines in ss. NR 243.15 (1) (b) and s. ATCP 51.32 are designed to enable permit issuers to thoroughly review today’s complex systems for completeness and conformance with applicable standards. Local governmental units should

1 make every effort to coordinate their permit reviews with other government
2 programs conducting similar reviews.

3
4 3. Require a nutrient management plan that complies with s. ATCP 50.04 (3).

5 **Note:** A nutrient management plan, demonstrating that manure can be properly utilized,
6 should be included with a permit application under par. (a). If the county, city,
7 village or town wants to monitor compliance with the nutrient management plan,
8 its ordinance may include monitoring provisions under sub. (2) (g).
9

10 4. Require consistency with state performance standards and prohibitions, and require
11 construction in accordance with technical standards including all of the following:

12 a. NRCS technical guide waste storage facility standard 313 (September, 2012).

13 b. NRCS technical guide manure transfer standard 634 (September, 2012).

14 c. Other applicable NRCS technical guide standards.

15 d. Applicable DNR requirements under s. 281.65 (4) (g) 5., Stats.

16 **SECTION 108.** ATCP 50.56 (4) (intro.) and (a) are amended to read:

17 (4) (intro.) ~~ABANDONMENT~~ CLOSURE PROVISIONS. An ordinance adopted under s. 92.16,
18 Stats., may prohibit any person from ~~abandoning~~ closing a manure storage system unless that
19 person does all of the following:

20 (a) Submits ~~an abandonment~~ a closure plan for approval by the county, city, village or
21 town. The ~~abandonment~~ closure plan shall comply with the waste facility closure provisions
22 contained in the NRCS technical guide, closure of waste impoundments standard 360
23 (~~November, 2006~~) (January, 2013).

24 **SECTION 109.** ATCP 50.56 (4) (a) (Note) is created to read:

25 **Note:** The NRCS technical guide standard 360 is on file with the department and the
26 legislative reference bureau.
27

28 **SECTION 110.** ATCP 50.56 (4) (b), (c) and (Note) and (6) are amended to read:

29 ATCP 50.56 (4) (b) Obtains a permit for the ~~abandonment~~ closure.

1 (c) Complies with the approved abandonment closure plan under par. (a).

2 **Note:** An ordinance may apply the abandonment closure requirements under sub. (4) to
3 any manure storage system, regardless of when that system was installed.

4
5 ~~For information on how to obtain~~ Copies of NRCS technical guide standards,
6 including any secondary standards incorporated by reference in those standards,
7 see Appendix G can be obtained by visiting the department website at:
8 http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water
9 [Resource_Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water) or by calling (608) 224-4622.

10
11 (6) Before a county, city, village or town adopts or amends an ordinance under s. 92.16,
12 Stats., the county, city, village or town shall may submit the ordinance to the department. ~~The~~
13 ~~department shall for review of the ordinance for to determine~~ consistency with this chapter. The
14 department may ask the county, city, village or town for information that it needs to perform the
15 review.

16 **SECTION 111.** ATCP 50.60 (1) (a) (Note) is amended to read:

17 **Note:** See s. 92.15, Stats. A person adversely affected by a local livestock regulation
18 may oppose its adoption at the local level. The person may also challenge a local
19 regulation in court if the person believes that the local governmental unit has
20 violated par. (a) or s. 92.15, Stats. A local governmental unit is responsible for
21 analyzing the legal adequacy of its regulations, and may exercise its own legal
22 judgment in deciding whether to seek state approval under this section.

23
24 A local permit requirement does not, *by itself*, violate par. (a). But permit
25 *conditions* codified in a local regulation must comply with par. (a). In the case of
26 local permit conditions for new and expanding livestock operations, local
27 governmental units must codify more stringent regulation and meet other
28 requirements of s. ATCP 51.10 (3). If a local governmental unit routinely requires
29 permit holders to comply with *uncodified* conservation requirements that exceed
30 state standards, those uncodified requirements may be subject to court challenge
31 under s. 92.15, Stats., and par. (a) as *de facto* regulatory enactments. A local
32 governmental unit may forestall a legal challenge by codifying standard permit
33 conditions and obtaining any necessary state approval under this section. The
34 department will review codified regulations under sub. (2), but will not review
35 individual permits or uncodified permit conditions.

36
37 **SECTION 112.** Subchapter VIII (Note) is created to read:
38

Note: For information on how to obtain NRCS technical guide standards and any other standards required under this subchapter, including any secondary standards incorporated by reference in those standards, a person may visit the department website at:
[http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water Resource Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx), or contact the department in writing at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
P.O. Box 8911
Madison, WI 53708-8911

SECTION 113. ATCP 50.61 (title) and (1) are amended to read:

ATCP 50.61 General standards for cost-shared practices; pre-approval of cost-shared practices. (1) ~~Cost-shared~~ Except as authorized under sub. (3), cost-shared practices under this chapter shall comply with applicable standards under this subchapter.

SECTION 114. ATCP 50.61 (3) and (4) and (Note) are created to read:

ATCP 50.61 (3) VOLUNTARY USE OF UPDATED TECHNICAL STANDARDS. The department may authorize a county to cost-share a conservation practice to be implemented under the updated version of a technical standard listed in this subchapter. The county may cost-share the conservation practice using the updated technical standard if all of the following apply:

(a) The updated technical standard provides conservation benefits at least as beneficial as the version listed in this subchapter.

(b) The updated technical standard has been adopted by NRCS, DNR or the applicable technical standards entity listed in this subchapter.

(c) The landowner voluntarily agrees, in writing, to the use of the updated standard to implement the conservation practice.

(4) **PRE-APPROVAL OF COST-SHARED PRACTICES.** The department may, at any time, require advance approval of any practice cost-shared under this chapter. The department shall

1 provide written notice to affected parties of the cost-shared practices requiring pre-approval by
2 the department and an opportunity for the affected parties to comment on the listed practices.

3 The department shall do all of the following:

4 (a) Identify the practice for which pre-approval is required.

5 (b) Establish the conditions under which pre-approval is required and the process for
6 securing the pre-approval.

7 (c) Provide at least 30 calendar days written notice to each county and other affected
8 grant recipients before requiring pre-approval of the listed cost-shared practice.

9 **Note:** The approval authorized under this subsection is in addition to the approval
10 required under s. ATP 50.40(8) for contracts exceeding \$50,000 in cost-share
11 payments.

12
13 The department may provide notice by email or by posting the information on its
14 website.

15
16 **SECTION 115.** ATP 50.62 (1) (b) 6. is created to read:

17 ATP 50.62 (1) (b) 6. A waste transfer system as defined in s. ATP 50.93.

18 **SECTION 116.** ATP 50.62 (1) (e) 1. and 3. are amended to read:

19 ATP 50.62 (1) (e) 1. A milking center waste control system, except for the system
20 component used to transfer the waste to manure storage.

21 3. A barnyard runoff control system as defined in s. ATP 50.64 (1), except for the
22 system component used to transfer the waste to manure storage.

23 **SECTION 117.** ATP 50.62 (1) (e) 5. is created to read:

24 ATP 50.62 (1) (e) 5. A feed storage system, except for the system component used to
25 transfer leachate and contaminated runoff to manure storage.

26 **SECTION 118.** ATP 50.62 (3) (d) (Note) and (5) (e) 1. to 5. are amended to read:

ATCP 50.62 (3) (d) **Note:** The NRCS technical guide ~~nutrient management standard 590~~
(September, 2005) ~~is reproduced in Appendix D~~ is on file with the department and
the legislative reference bureau. Copies can be obtained by visiting the department
website at:
[http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx)
[Resource Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx) or by calling (608) 224-4622. The
feasibility of applying manure to land under par. (d) will be determined in light of
existing topographic, climatological and management factors.

(5) (e) 1. NRCS technical guide waste storage facility standard 313 ~~(December, 2005)~~
(September, 2012).

2. NRCS technical guide ~~manure~~ waste transfer standard 634 ~~(February, 2007)~~
(September, 2012).

3. NRCS technical guide water well decommissioning standard 351 ~~(May, 2008)~~ (June,
2011).

4. NRCS technical guide ~~fencing~~ fence standard 382 ~~(November, 1999)~~ (September,
2010).

5. NRCS technical guide heavy use area protection standard 561 ~~(October, 2007)~~
(January, 2011).

SECTION 119. ATCP 50.62 (5) (e) 6. is renumbered ATCP 50.62 (5) (e) 9.

SECTION 120. ATCP 50.62 (5) (e) 6. (Note) is repealed.

SECTION 121. ATCP 50.62 (5) (e) 6. to 8. are created to read:

ATCP 50.62 (5) (e) 6. NRCS technical guide pond sealing or lining – flexible membrane
standard 521A (September, 2012).

7. NRCS technical guide pond sealing or lining-bentonite sealant standard 521C
(January, 2011).

8. NRCS technical guide pond sealing or lining – compacted clay treatment standard
521D (September, 2012)

1 **SECTION 122.** ATCP 50.62 (5) (em) is created to read:

2 ATCP 50.62 (5) (em) The landowner agrees, in writing, to maintain the original storage
3 capacity of the cost-shared practice for the 10 year maintenance period of the cost-share contract.
4 If more animals are added during the 10 year maintenance period, all of the following provisions
5 apply:

6 1. The landowner is responsible, at his or her own cost, for construction of any additional
7 storage necessary to maintain the same storage capacity if the landowner's nutrient management
8 plan cannot accommodate added manure from the facility expansion.

9 2. The landowner may be required to add manure storage capacity without an offer of
10 cost-sharing, notwithstanding s. ATCP 50.08.

11 **SECTION 123.** ATCP 50.62 (5) (f) is amended to read:

12 ATCP 50.62 (5) (f) The landowner establishes a nutrient management plan, and agrees to
13 comply with that plan and maintain the manure storage system for 10 years unless the landowner
14 discontinues the animal feeding operation ~~is discontinued~~.

15 **SECTION 124.** ATCP 50.62 (5) (f) (Note) is created to read:

16 **Note:** The landowner must provide to the county a completed nutrient management
17 checklist to receive cost-share payment for this practice and must provide an
18 updated checklist for each year of the maintenance period. A person may obtain a
19 copy of the checklist from the county conservation office or by visiting the
20 department website at:
21 [http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx)
22 [Resource_Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx), or by contacting the department in
23 writing at:

24
25 Wisconsin Department of Agriculture, Trade and Consumer Protection
26 Division of Agricultural Resource Management
27 P.O. Box 8911
28 Madison, WI 53708-8911
29 Email: datcpnutrientmanagement@wisconsin.gov

30
31 **SECTION 125.** ATCP 50.63 (5) (Note) is repealed.

1 **SECTION 126.** ATCP 50.64 (1) (a), (b) and (e) are amended to read:

2 ATCP 50.64 (1) (a) ~~Access roads or cattle crossings~~ road under s. ATCP 50.65.

3 (b) ~~Animal trails~~ Trails and walkways under s. ATCP 50.66.

4 (e) Heavy use area protection ~~under s. ATCP 50.74~~ described in NRCS technical guide
5 heavy use area protection standard 561 (January, 2011).

6 **SECTION 127.** ATCP 50.64 (1) (v) (Note) is created to read:

7 **Note:** The NRCS technical guide standard 561 is on file with the department and the
8 legislative reference bureau. Copies can be obtained by visiting the department
9 website at:
10 [http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx)
11 [Resource_Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx) or by calling (608) 224-4622.

12
13 **SECTION 128.** ATCP 50.64 (5) (a) and (b) are amended to read:

14 ATCP 50.64 (5) (a) The system complies with applicable design, construction and
15 maintenance standards under this subchapter and NRCS technical guide heavy use area
16 protection standard 561 (January, 2011).

17 (b) The landowner agrees to ~~maintain~~ to a 10 year maintenance period for the barnyard
18 runoff control system, and ~~the~~ any nutrient management plan if required under par. (c), for 10
19 years unless the landowner discontinues the animal feeding operation is discontinued.

20 **SECTION 129.** ATCP 50.64 (5) (c) and (second Note) are created to read:

21 ATCP 50.64 (5) (c) The landowner agrees to maintain a nutrient management plan for 10
22 years if any of the following apply:

23 1. Manure in the barnyard will accumulate for more than 15 days as a result of the new
24 runoff control system.

25 2. The landowner has inadequate land to spread manure in relation to the animal units, as
26 calculated under ch. ATCP 51, Appendix A, Worksheet 3, Part B.

1 (second) Note: The NRCS technical guide standard 561 is on file with the department
2 and the legislative reference bureau. Copies can be obtained by visiting the
3 department website at:
4 [http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx)
5 [Resource Management/ATCP50/index.aspx](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water_Resource_Management/ATCP50/index.aspx) or by calling (608) 224-4622.
6

7 SECTION 130. ATCP 50.65 (title), (1) and (2) are amended to read:

8 ATCP 50.65 (title) ~~Access roads and cattle crossings~~ road. (1) In this section, "access
9 ~~road or cattle crossing~~" means a road or pathway which confines or directs the movement of
10 livestock ~~or~~, farm equipment or vehicular traffic, and which is designed and installed to control
11 surface water runoff, to protect an installed practice, ~~to control livestock access to a stream or~~
12 ~~waterway, to stabilize a stream crossing,~~ or to prevent erosion.

13 (2) A cost-share grant under s. ATCP 50.40 may reimburse the cost of ~~establishing~~
14 installing conservation practices necessary to prevent water quality impairment that may result
15 from the construction of an access road ~~or cattle crossing~~ if the access road ~~or cattle crossing~~ is
16 needed to comply with applicable state or local regulations.

17 SECTION 131. ATCP 50.65 (2) (Note) and (2m) are created to read:

18 ATCP 50.65 (2) Note: An eligible practice could be a culvert.

19
20 (2m) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not be used to
21 cover the costs for road surfacing and other road construction activities beyond the area
22 necessary to address the environmental problem.

23 SECTION 132. ATCP 50.65 (3) (intro.), (a) and (Note) are amended to read:

24 ATCP 50.65 (3) (intro.) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-
25 share grant under s. ATCP 50.40 may not reimburse the cost of establishing water quality
26 practices associated with an access road ~~or cattle crossing~~ unless all of the following conditions
27 are met:

(a) The access road ~~or cattle crossing~~ complies with all of the following that apply:

1. NRCS technical guide access road standard 560 (~~August, 2006~~)(September, 2010).

2. NRCS technical guide streambank and shoreline protection standard 580 (~~December, 2005~~)(November, 2009).

~~3. NRCS technical guide fence standard 382 (November 1999).~~

Note: ~~For information on how to obtain~~ When an access road crosses a stream, see s. ATCP 50.88.

~~NRCS technical guide standards, including any secondary standards incorporated by reference in those standards, see Appendix G.~~

SECTION 133. ATCP 50.65 (3) (b) is amended to read:

ATCP 50.65 (3) (b) The landowner agrees to maintain the access road ~~or cattle crossing~~ practice for 10 years unless farming operations on the affected land are discontinued or the practices are no longer required to prevent the environmental problem.

SECTION 134. ATCP 50.66 (title), (1), (2), (3) (intro.) and (a) are amended to read:

ATCP 50.66 (title) ~~Animal trails~~ **Trails and walkways.** (1) DEFINITION. In this section, “~~animal~~ trail or walkway” means a travel lane to facilitate movement of livestock or people.

(2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of establishing ~~an animal~~ a trail or walkway when necessary to comply with state or local regulations.

(3) (intro.) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40 may not reimburse the cost of establishing ~~an animal~~ a trail or walkway unless all of the following conditions are met:

(a) The ~~animal~~ trail or walkway complies with all of the following that apply:

1 1. NRCS technical guide animal trails and walkways standard 575 (~~August,~~
2 ~~2006~~)(November, 2012).

3 2. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~
4 ~~2005~~)(November, 2009).

5 3. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

6 **SECTION 135.** ATPC 50.66 (3) (a) 4. is created to read:

7 ATPC 50.66 (3) (a) 4. NRCS technical guide trails and walkways standard 568
8 (December, 2010).

9 **SECTION 136.** ATPC 50.66 (3) (a) 3. (Note) is renumbered ATPC 50.66 (3) (a) 4. (Note)
10 and amended to read:

11 **Note:** ~~For information on how to obtain~~ When an access road crosses a stream, see s.
12 ATPC 50.88.

13 ~~NRCS technical guide standards, including any secondary standards incorporated~~
14 ~~by reference in those standards see Appendix G.~~
15

16
17 **SECTION 137.** ATPC 50.66 (3) (b) is amended to read:

18 ATPC 50.66 (3) (b) The landowner agrees to maintain the animal trail or walkway for 10
19 years unless farming operations on the affected land are discontinued or the practice is no longer
20 required to prevent the environmental problem.

21 **SECTION 138.** ATPC 50.67 (3) (a), (b) and (c) are amended to read:

22 ATPC 50.67 (3) (a) NRCS technical guide contour farming standard 330 (~~May,~~
23 ~~2002~~)(November, 2008).

24 (b) NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December, 2010).

(c) NRCS technical guide ~~wildlife upland~~ wildlife habitat management standard 645 (~~July, 2000~~)(January, 2013), if habitat management is used to mitigate the loss of habitat resulting from the installation of contour farming.

SECTION 139. ATPC 50.67 (3) (c) (Note) is repealed.

SECTION 140. ATPC 50.68 (4) (a) is amended to read:

ATPC 50.68 (4) (a) The cropland cover meets NRCS technical guide cover crop standard 340 (~~June, 2002~~)(February, 2012).

SECTION 141. ATPC 50.68 (4) (a) (Note) is repealed.

SECTION 142. ATPC 50.69 (1) and (4) (a) 1. to 7. are amended to read:

ATPC 50.69 (1) DESIGN. In this section, "critical area stabilization" means planting suitable vegetation on erodible areas such as steep slopes; and gullies and roadsides, so as to reduce soil erosion or pollution from agricultural nonpoint sources. "Critical area stabilization" may also include treating areas that drain into bedrock crevices, openings or sinkholes.

(4) (a) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January, 2013).

2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

4. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)(October, 2008).

5. NRCS technical guide mulching standard 484 (~~June, 2002~~)(January, 2012).

6. NRCS technical guide tree/shrub establishment standard 612 (~~April, 2003~~)(July, 2011).

1 7. NRCS technical guide karst sinkhole treatment standard 725 (~~March,~~
2 2000)(December, 2010).

3 **SECTION 143.** ATCP 50.69 (4) (a) 7. (Note) is repealed.

4 **SECTION 144.** ATCP 50.69 (4) (b) is amended to read:

5 ATCP 50.69 (4) (b) The landowner agrees to maintain the critical area stabilization
6 practice for 10 years unless farming operations on the affected land are discontinued or the
7 practice is no longer required to prevent the environmental problem.

8 **SECTION 145.** ATCP 50.70 (4) (b) 1. to 4. and 6. to 9. are amended to read:

9 ATCP 50.70 (4) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
10 2002)(January, 2013).

11 2. NRCS technical guide diversion standard 362 (~~August, 2006~~)(December, 2010).

12 3. NRCS technical guide fence standard 382 (~~November, 1999~~) (November, 2010).

13 4. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~) (January, 2011).

14 6. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~) (December,
15 2010).

16 7. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~) (October, 2012).

17 8. NRCS technical guide underground outlet standard 620 (~~May, 2002~~) (January, 2011).

18 9. NRCS technical guide ~~wildlife~~ upland wildlife habitat management standard 645
19 (~~July, 2000~~)(January, 2013).

20 **SECTION 146.** ATCP 50.70 (4) (b) 9. (Note) is repealed.

21 **SECTION 147.** ATCP 50.705 is created to read:

22 ATCP 50.705 **Feed storage runoff control systems.** (1) DEFINITIONS. In this section:

23 (a) "Feed storage area" means an area used to store livestock feed including corn silage,

haylage, and industrial by-products including distillers grain, brewers grain, candy, pizza crust, bakery waste, cotton seed, soybean meal, animal fats, blood meal, fish meal, cannery waste, beet pulp, citrus pulp, soy hulls, corn midlings, and whey, potatoes, and grocery store vegetables.

The feed storage area includes the area up to the outside edge of the surface on which the feed is stored and any apron area. The feed storage area does not include storage areas for feeds considered dry with 40% moisture or less, if the storage areas are protected from precipitation.

(b) "Feed storage runoff control system" means a system of facilities or practices to contain, divert, retard, treat or otherwise control the discharge of leachate and contaminated runoff from livestock feed storage areas.

(2) ELIGIBLE COSTS. A cost-share grant under this section may reimburse any of the following costs related to a feed storage runoff control system:

(a) Costs for diversion of clean water from the storage area.

(b) Costs for conduits, permanent pumps and related equipment required to collect, transfer and store discharges of leachate and contaminated runoff including subsurface and surface discharges.

(c) Costs for preparation of a site for a runoff treatment area and establishment of permanent vegetative cover.

(3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse any of the following costs related to a feed storage runoff control system:

(a) Costs for any system, component or practice that is not required to correct an identified water pollution hazard.

(b) Buildings or modifications to buildings.

1 (c) Portable equipment to pump or spread feed storage runoff onto land or to incorporate
2 those wastes into land.

3 (d) A non-permanent storage area allowed under NRCS technical guide waste treatment
4 standard 629 (September, 2012).

5 (4) FEED STORAGE RUNOFF CONTROL SYSTEMS; GRANT DISQUALIFICATION. A county land
6 conservation committee may not award a cost-share grant for a feed storage runoff control
7 system if any of the following apply:

8 (a) The landowner intentionally aggravated a pollution discharge from the animal
9 feeding operation.

10 (b) The landowner could have prevented the discharge of pollutants through improved
11 management practices at nominal cost.

12 (c) The landowner holds, or is required to apply for, a Wisconsin pollution discharge
13 elimination system permit for the animal feeding operation under s. 283.31, Stats.

14 (d) The landowner could have prevented the discharge of pollutants by complying with
15 an operations and maintenance plan previously agreed upon by the landowner and one of the
16 following:

17 1. The department.

18 2. The county land conservation committee.

19 3. DNR.

20 4. NRCS.

21 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse
22 any costs related to a feed storage runoff control system unless all of the following conditions are
23 met:

(a) The system complies with all of the following that apply:

1. NRCS technical standard guide waste storage facility standard 313 (September, 2012).
2. NRCS technical guide waste treatment standard 629 (September, 2012).
3. NRCS technical guide waste transfer standard 634 (September, 2012).
4. NRCS technical guide vegetated treatment area standard 635 (September, 2012).
5. NRCS technical guide wetland restoration standard 657 (September, 2000).
6. NRCS technical guide nutrient management standard 590 (September, 2005).
7. NRCS technical guide diversion standard 362 (December, 2010).
8. Other standards specified by the department.

Note: Additional regulatory requirements may apply for runoff control systems including s. NR 213.13 requirements for sweet corn silage stacks of greater than 150 tons, and s. ATCP 51.20 (3) requirements for livestock facilities required to obtain siting permit.

(b) The landowner agrees to a 10 year maintenance period for feed storage runoff

control system, and a nutrient management plan if runoff is collected from a feed storage area

over 1 acre in size and the runoff is not transferred to a manure storage system. The maintenance

period does not apply if the animal feeding operation is discontinued.

Note: To comply with the process wastewater performance standard in s. NR 155.055 for feed storage, landowners may install conservation practices or make management changes that reduce the level of discharge below the “significant” threshold, as determined in s. NR 151.055 (3). However, when state cost-sharing funds are available, landowners should be provided cost-sharing to install the suite of practices that both correct and prevent discharges, ensuring adequate protection of groundwater and surface water. Farms with small storage areas have lower cost options to meet the technical standards.

SECTION 148. ATCP 50.71 (1) is amended to read:

1 ATCP 50.71 (1) DEFINITION. In this section, “field windbreak” means a strip or belt of
2 trees, shrubs or grasses established or ~~restored~~renovated within or adjacent to a field, so as to
3 control soil erosion by reducing wind velocities at the land surface.

4 **SECTION 149.** ATCP 50.71 (3) (b) 1. to 3. are amended to read:

5 ATCP 50.71(3) (b) 1. NRCS technical guide fence standard 382 (~~November,~~
6 ~~1999~~)(September, 2010).

7 2. NRCS technical guide ~~windbreak/shelterbreak~~ windbreak/shelterbelt establishment
8 standard 380 (~~June, 2002~~)(November, 2011).

9 3. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June,~~
10 ~~2002~~)(October, 2008).

11 **SECTION 150.** ATCP 50.71 (3) (b) 3. (Note) is repealed.

12 **SECTION 151.** ATCP 50.71 (3) (b) 4. is created to read:

13 ATCP 50.71 (3) (b) 4. NRCS technical guide windbreak/shelterbelt renovation standard
14 650 (January, 2013).

15 **SECTION 152.** ATCP 50.72 (3) (a) 1. to 3., and 5. to 7. are amended to read:

16 ATCP 50.72 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
17 ~~2002~~)(January, 2013).

18 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

19 3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

20 5. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)
21 (October, 2008).

22 6. NRCS technical guide mulching standard 484 (~~June, 2002~~)(January, 2012).

7. NRCS technical guide riparian forest buffer standard 391 (~~January, 2001~~)(January, 2013).

SECTION 153. ATCP 50.72 (3) (a) 7. (Note) is repealed.

SECTION 154. ATCP 50.73 (3) (d) 1. to 7. and 9. to 12. are amended to read:

ATCP 50.73 (3) (d) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January, 2013).

2. NRCS technical guide sediment basin standard 350 (~~August, 2008~~)(December, 2010).

3. NRCS technical guide diversion standard 362 (~~August, 2006~~)(December, 2010).

4. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

5. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December, 2010).

6. NRCS technical guide grade stabilization structure standard 410 (~~July, 2001~~)(January, 2010).

7. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

9. NRCS technical guide mulching standard 484 (~~June, 2002~~)(January, 2012).

10. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

11. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

12. NRCS technical guide water and sediment control basin standard 638 (~~July, 2001~~)(January, 2011).

SECTION 155. ATCP 50.73 (3) (d) 12. (Note) is repealed.

SECTION 156. ATCP 50.74 is repealed.

SECTION 157. ATCP 50.75 (4) (a) 1. and 2. are amended to read:

1 ATCP 50.75 (4) (a) 1. NRCS technical guide fence standard 382 (~~November,~~
2 ~~1999~~)(September, 2010).

3 2. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June,~~
4 ~~2002~~)(October, 2008).

5 **SECTION 158.** ATCP 50.75 (4) (a) 2. (Note) is repealed.

6 **SECTION 159.** ATCP 50.76 (5) (a) 2. to 4. are amended to read:

7 ATCP 50.76 (5) (a) 2. NRCS technical guide watering facility standard 614 (~~April,~~
8 ~~2002~~)(May, 2011).

9 3. NRCS technical guide water well standard 642 (~~May, 2005~~)(April, 2011).

10 4. NRCS technical guide livestock pipeline standard 516 (~~April, 2002~~)(October, 2012).

11 **SECTION 160.** ATCP 50.76 (5) (a) 5. (Note) is repealed.

12 **SECTION 161.** ATCP 50.76 (5) (a) 6. and 7. are created to read:

13 ATCP 50.76 (5) (a) 6. NRCS technical guide heavy use area protection standard 561
14 (January, 2011).

15 7. NRCS technical guide pumping plant standard 533 (July, 2011).

16 **SECTION 162.** ATCP 50.77 (4) (a) 1. and (Note), and 2. to 4. are amended to read:

17 ATCP 50.77 (4) (a) 1. ~~The University of Wisconsin Extension pollution control guide~~
18 ~~for milking~~ Milking center waste water management, UWEX publication A3592 (July, 1994)
19 wastewater guidelines, a companion document to Wisconsin NRCS standard 629 (June, 2009).

20 **Note:** ~~The UW extension pollution control guide for~~ Copies of milking center waste
21 ~~water management wastewater guidelines, a companion document to Wisconsin~~
22 NRCS standard 629 (June, 2009) is on file with the department and the legislative
23 reference bureau Copies may be purchased from the department or the University
24 of Wisconsin Extension (UWEX Pub. No. A3592). For further information, see
25 Appendix G and can be obtained by visiting the department website at:
26 [http://datcp.wi.gov/Environment/Land and Water Conservation/Soil and Water](http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water)

1 Resource Management/ATCP50/index.aspx or by calling (608) 224-4622. For
2 printed copies contact the Wisconsin state NRCS office at (608) 662-4422.
3

4 2. NRCS technical guide waste treatment standard 629 (~~August, 2008~~)(September,
5 2012).

6 3. NRCS technical guide waste storage facility standard 313 (~~December, 2005~~)
7 (September, 2012).

8 4. NRCS technical guide ~~manure~~ waste transfer standard 634 (~~February, 2007~~)
9 (September, 2012).

10 SECTION 163. ATCP 50.77 (4) (a) 5. (Note) is repealed.

11 SECTION 164. ATCP 50.77 (4) (a) 6. and 7. are created to read:

12 ATCP 50.77 (4) (a) 6. NRCS technical guide vegetated treatment area standard 635
13 (September, 2012).

14 7. NRCS technical guide constructed wetland standard 656 (September, 2012).

15 SECTION 165. ATCP 50.78 (3) (a) (Note) is amended to read:

16 **Note:** The NRCS technical guide nutrient management standard 590 (September, 2005)
17 ~~is reproduced in Appendix D~~ can be obtained by visiting the department website
18 at:
19 http://datcp.wi.gov/Environment/Land_and_Water_Conservation/Soil_and_Water
20 Resource_Management/ATCP50/index.aspx or by calling (608) 224-4622.
21

22 SECTION 166. ATCP 50.79 (2) (intro.), (3) (a) 1., and (b) are amended to read:

23 ATCP 50.79 (2) (intro.) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may
24 reimburse costs for pesticide management described in a pesticide management plan, if required,
25 or described in the plan for the design of a pesticide structure. A cost-share grant may reimburse
26 any of the following costs related to pesticide management:
27

28 (3) (a) 1. NRCS technical guide integrated pest management standard 595 (~~June,~~
29 2003)(January, 2013).

(b) The landowner agrees to maintain the pesticide management practice plan, if required, for each cropping season for which cost sharing is provided the duration specified in the cost-share contract, and to maintain any structures for 10 years unless farming operations on the affected land are discontinued.

SECTION 167. ATPC 50.80 (3) (a) 1. to 6., 7. (Note) and 8. are amended to read:

ATPC 50.80 (3) (a) 1. NRCS technical guide critical area planting standard 342 ~~(June, 2002)~~(January, 2013).

2. NRCS technical guide ~~pasture and hayland planting~~ forage and biomass planting standard 512 ~~(June, 2002)~~(January, 2013).

3. NRCS technical guide ~~use exclusion~~ access control standard 472 ~~(June, 2002)~~ (October, 2008).

4. NRCS technical guide streambank and shoreline protection standard 580 ~~(December, 2005)~~(November, 2009).

5. NRCS technical guide heavy use area protection standard 561 ~~(August, 2008)~~(January, 2011).

6. NRCS technical guide prescribed grazing standard (managed grazing-Wisconsin) 528 ~~(December, 2005)~~ (December, 2008).

7. **Note:** Copies of "Pastures for profit: a guide to rotational grazing" are on file with the department and the legislative reference bureau. Copies may be ~~purchased from the department or~~ obtained from the University of Wisconsin-Extension (UWEX Pub. No. A3529). ~~For further information, see Appendix G.~~

8. NRCS technical guide animal trails and walkways standard 575 ~~(August, 2006)~~(November, 2012).

SECTION 168. ATPC 50.80 (3) (a) 9. (Note) is repealed.

SECTION 169. ATPC 50.82 (4) (c) 1. to 3. are amended to read:

1 ATCP 50.82 (4) (c) 1. NRCS technical guide residue and tillage management-no till/strip
2 till/direct seed standard 329 (~~October, 2006~~)(January, 2012).

3 2. NRCS technical guide residue and tillage management-mulch till standard 345
4 (~~October, 2006~~)(January, 2012).

5 3. NRCS technical guide residue management-seasonal standard 344 (~~October, 2006~~)
6 (January, 2012).

7 **SECTION 170.** ATCP 50.82 (4) (c) 3. (Note) is repealed.

8 **SECTION 171.** ATCP 50.82 (4) (c) 4. is created to read:

9 ATCP 50.82 (4) (c) 4. NRCS technical guide residue and tillage management-ridge till
10 standard 346 (January, 2012).

11 **SECTION 172.** ATCP 50.83 (3) (a) 1. to 3., 5. to 7. and 9. are amended to read:

12 ATCP 50.83 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
13 ~~2002~~)(January, 2013).

14 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

15 3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

16 5. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)
17 (October, 2008).

18 6. NRCS technical guide mulching standard 484 (~~June, 2002~~)(January, 2012).

19 7. NRCS technical guide riparian forest buffer standard 391 (~~January, 2001~~)(January,
20 2013).

21 9. NRCS technical guide ~~wildlife~~ upland wildlife habitat management standard 645
22 (~~July, 2000~~)(January, 2013).

23 **SECTION 173.** ATCP 50.83 (3) (a) 9. (Note) is repealed.

1 **SECTION 174.** ATPC 50.84 (5) (a) is amended to read:

2 ATPC 50.84 (5) (a) The roof complies with ~~the american society of civil engineers,~~
3 ~~“Minimum Design Loads for Buildings and Other Structures,” ASCE/SEI 7-05 (2006) NRCS~~
4 ~~technical guide roofs and covers standard 367 (October, 2011).~~

5 **SECTION 175.** ATPC 50.84 (5) (a) (Note) is repealed.

6 **SECTION 176.** ATPC 50.85 (4) (a) 1. and 2. are amended to read:

7 ATPC 50.85 (4) (a) 1. NRCS technical guide roof runoff structure standard 558 ~~(January,~~
8 ~~2008)(September, 2010).~~

9 2. NRCS technical guide underground outlet standard 620 ~~(May, 2002)(January, 2011).~~

10 **SECTION 177.** ATPC 50.85 (4) (a) 2. (Note) is repealed.

11 **SECTION 178.** ATPC 50.86 (4) (b) 1. to 8. and (Note) are amended to read:

12 ATPC 50.86 (4) (b) 1. NRCS technical guide critical area planting standard 342 ~~(June,~~
13 ~~2002)(January, 2013).~~

14 2. NRCS technical guide sediment basin standard 350 ~~(August, 2008)(December, 2010).~~

15 3. NRCS technical guide ~~manure-waste~~ transfer standard 634 ~~(February,~~
16 ~~2007)(September, 2012).~~

17 4. NRCS technical guide fence standard 382 ~~(November, 1999)(September, 2010).~~

18 5. NRCS technical guide vegetated treatment area standard 635 ~~(August, 2008)~~
19 ~~(September, 2012).~~

20 6. NRCS technical guide heavy use area protection standard 561 ~~(August, 2008)~~
21 ~~(January, 2011).~~

22 7. NRCS technical guide underground outlet standard 620 ~~(May, 2002) (January, 2011).~~

8. Wisconsin DNR conservation practice standard 1001, wet detention basin ~~(June, 1999)~~ (October, 2007).

Note: Copies of the DNR conservation practice standard 1001 are on file with the department and the legislative reference bureau. Copies may be obtained from DNR or the department. For more information, see Appendix G by visiting the DNR website at: <http://dnr.wi.gov/topic/stormwater/standards/index.html>.

SECTION 179. ATPC 50.86 (4) (b) 8. (second Note) is repealed.

SECTION 180. ATPC 50.87 (4) (a) 1. to 3. are amended to read:

ATPC 50.87 (4) (a) 1. NRCS technical guide karst sinkhole treatment standard 725 ~~(March, 2000)~~ (December, 2010).

2. NRCS technical guide diversion standard 362 ~~(August, 2006)~~ (December, 2010).

3. NRCS technical guide grassed waterway standard 412 ~~(June, 2008)~~ (January, 2011).

SECTION 181. ATPC 50.87 (4) (a) 3. (Note) is repealed.

SECTION 182. ATPC 50.88 (title) and (1) are amended to read:

ATPC 50.88 (title) **Streambank ~~and~~ or shoreline protection.** (1) DEFINITION. In this section, “streambank ~~and or~~ shoreline protection” means ~~using vegetation or structures~~ waterbody-specific treatments used to stabilize and protect the eroding banks of streams or constructed channels, and shorelines of lakes, reservoirs or estuaries, or excavated channels against scour and erosion, or to The practice is designed and installed to provide water quality benefits or control soil erosion including degradation from livestock and may protect fish habitat and water quality from degradation due to livestock access, as an incidental benefit. Streambank or shoreline protection may include any of the following components:

SECTION 183. ATPC 50.88 (1) (a) to (h) are created to read:

ATPC 50.88 (1) (a) Critical area stabilization under s. ATPC 50.69.

(b) Diversions under s. ATPC 50.70.

1 (c) Grade stabilization under s. ATCP 50.73.

2 (d) Riparian buffers under s. ATCP 50.83.

3 (e) Roof runoff systems under s. ATCP 50.85.

4 (f) Subsurface drain under s. ATCP 50.90.

5 (g) Underground outlet under s. ATCP 50.92.

6 (h) Wetland development or restoration under s. ATCP 50.98.

7 **SECTION 184.** ATCP 50.88 (2) (intro.) is amended to read:

8 ATCP 50.88 (2) (intro.) **ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may
9 reimburse any of the following costs related to streambank ~~and~~ or shoreline protection:

10 **SECTION 185.** ATCP 50.88 (2) (a) is repealed.

11 **SECTION 186.** ATCP 50.88 (2) (b) is renumbered ATCP 50.88 (2) (a) and amended to
12 read:

13 ATCP 50.88 (2) (a) Costs to install new soil bioengineering and structural treatments
14 including rock riprap. Wood chunks, unsorted demolition material, brick, plaster, blacktop and
15 other materials that may produce leachates may not be used as riprap. A cost-share grant may
16 reimburse costs for rock and timber riprap used to establish fish habitat, in combination with the
17 restoration of a riparian buffer and as part of a streambank ~~and~~ or shoreline protection scheme,
18 provided that reimbursement for fish habitat does not exceed 25% of the cost-share grant.

19 **SECTION 187.** ATCP 50.88 (2) (c) is renumbered ATCP 50.88 (2) (b).

20 **SECTION 188.** ATCP 50.88 (2) (d) is repealed.

21 **SECTION 189.** ATCP 50.88 (2) (e) is renumbered ATCP 50.88 (2) (c).

22 **SECTION 190.** ATCP 50.88 (2) (c) (Note) is created to read:

23 **Note:** Additional cost-shared practices may be combined with this practice to fully
24 address the environmental problems at the site and protect the natural resource.

1 Where appropriate, additional practices may include fencing (ATCP 50.75) to
2 exclude livestock, water pumps or other facilities (ATCP 50.76) if the most cost-
3 effective way to deliver water to livestock excluded from access to surface water,
4 or stream crossings (ATCP 50.885) to minimize disturbance at points of entry to a
5 stream.

6
7 **SECTION 191.** ATCP 50.88 (2) (f) is repealed:

8 **SECTION 192.** ATCP 50.88 (2m) is created to read:

9 ATCP 50.88 (2m) INELIGIBLE COSTS. Except for violations of this chapter or ch. NR
10 151, a cost-share grant under s. ATCP 50.40 may not reimburse costs related to mitigation or
11 correction of a violation of state or local laws.

12 **SECTION 193.** ATCP 50.88 (3) (a) 1. to 5. are amended to read:

13 ATCP 50.88 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
14 ~~2002~~)(January, 2013).

15 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

16 3. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~
17 ~~2005~~)(November, 2009).

18 4. NRCS technical guide tree/shrub establishment standard 612 (~~April, 2003~~)(July,
19 2011).

20 5. NRCS technical guide heavy use area protection standard 561 (~~August,~~
21 ~~2008~~)(January, 2011).

22 **SECTION 194.** ATCP 50.88 (3) (a) 5. (Note) is repealed.

23 **SECTION 195.** ATCP 50.88 (3) (b) is repealed and recreated to read:

24 ATCP 50.88 (3) (b) Cost-share recipients shall obtain all required DNR permits before
25 installing any practices. The department may require documentation that permits have been
26 obtained before it makes reimbursements under this chapter.

1 **SECTION 196.** ATCP 50.88 (3) (c) is amended to read:

2 ATCP 50.88 (3) (c) The landowner agrees to maintain the streambank or shoreline
3 protection for 10 years unless ~~farming operations on the affected land are discontinued~~the
4 practices are no longer required to prevent the environmental problem.

5 **SECTION 197.** ATCP 50.885 is created to read:

6 ATCP 50.885 **Stream Crossing.** (1) **DEFINITION.** In this section, stream crossing means
7 a road or pathway which confines or directs the movement of livestock, farm equipment or
8 vehicular traffic over a stream, and which is designed and installed to improve water quality,
9 reduce erosion, protect an installed practice or control livestock access to a stream.

10 (2) **ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse any of the
11 following costs related to a stream crossing:

12 (a) The costs of constructing the stream crossing structure.

13 (b) The costs of installing conservation practices necessary to limit water quality
14 impairment from a stream crossing.

15 (c) The costs of installation of a culvert, to the extent the costs exceed the cost of normal
16 culvert installation, and the additional costs are necessary to prevent soil erosion to the
17 waterway.

18 (3) **INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse for
19 the costs of a stream crossing if the traffic can be re-directed along another route that would not
20 result in the same water quality impairment.

21 (4) **DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant under s. ATCP 50.40
22 may not reimburse the cost of establishing a stream crossing unless all of the following
23 conditions are met:

(a) The stream crossing complies with all of the following that apply:

1. NRCS technical guide access road standard 560 (September, 2010).

2. NRCS technical guide streambank and shoreline protection standard 580 (November, 2009).

3. NRCS technical guide fence standard 382 (September, 2010).

4. NRCS technical guide stream crossing standard 578 (January, 2013)

(b) The landowner agrees to maintain the stream crossing for 10 years unless the farming operations on the affected land are discontinued or the practices are no longer required to prevent the environmental problem.

SECTION 198. ATCP 50.89 (3) (b) 1. and 2. are amended to read:

ATCP 50.89 (3) (b) 1. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December, 2010).

2. NRCS technical guide stripcropping standard 585 (~~June, 2002~~)(April, 2009).

SECTION 199. ATCP 50.89 (3) (b) 3., 4. and 4. (Note) are repealed.

SECTION 200. ATCP 50.90 (3) (b) 1. and 2. are amended to read:

ATCP 50.90 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

SECTION 201. ATCP 50.90 (3) (b) 2. (Note) is repealed.

SECTION 202. ATCP 50.91 (3) (b) 1. and 4. to 8. are amended to read:

ATCP 50.91 (3) (b) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January, 2013).

2. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

1 4. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,
2 2010).

3 5. NRCS technical guide terrace standard 600 (~~June, 2002~~)(December, 2010).

4 6. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

5 7. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

6 8. NRCS technical guide water and sediment control basin standard 638 (~~July,~~
7 ~~2004~~)(January, 2011).

8 **SECTION 203.** ATP 50.91 (3) (b) 8. (Note) is repealed.

9 **SECTION 204.** ATP 50.92 (3) (b) 1. and 2. are amended to read:

10 ATP 50.92 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~June,~~
11 ~~2002~~)(October, 2012).

12 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

13 **SECTION 205.** ATP 50.92 (3) (b)2. (Note) is repealed.

14 **SECTION 206.** ATP 50.93 (4) (a) 1. and 2. are amended to read:

15 ATP 50.93 (4) (a) 1. NRCS technical guide ~~manure~~waste transfer standard 634
16 (~~February, 2007~~)(September, 2012).

17 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

18 **SECTION 207.** ATP 50.93 (4) (a) 2. (Note) is repealed.

19 **SECTION 208.** ATP 50.94 (3) (a) 1. to 5. are amended to read:

20 ATP 50.94 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
21 ~~2002~~)(January, 2013).

22 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

1 3. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June,~~
2 ~~2002~~)(October, 2008).

3 4. NRCS technical guide mulching standard 484 (~~June, 2002~~)(January, 2012).

4 5. NRCS technical guide vegetated treatment area standard 635 (~~August,~~
5 ~~2008~~)(September, 2012).

6 **SECTION 209.** ATCP 50.94 (3) (a) 5. (Note) is repealed.

7 **SECTION 210.** ATCP 50.95 (3) (a) 1. to 4. are amended to read:

8 ATCP 50.95 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
9 ~~2002~~)(January, 2013).

10 2. NRCS technical guide fence standard 382 (~~November, 1999~~)
11 (September, 2010).

12 3. NRCS technical guide water and sediment control basin standard 638 (~~July,~~
13 ~~2004~~)(January, 2011).

14 4. NRCS technical guide underground outlet standard 620 (~~May, 2002~~) (January, 2011).

15 **SECTION 211.** ATCP 50.95 (3) (a) 4. (Note) is repealed.

16 **SECTION 212.** ATCP 50.96 (3) (b) 1. to 7. are amended to read:

17 ATCP 50.96 (3) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
18 ~~2002~~)(January, 2013).

19 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

20 3. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

21 4. NRCS technical guide mulching standard 484 (~~June, 2002~~)(January, 2012).

22 5. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,
23 2010).

1 6. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

2 7. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

3 **SECTION 213.** ATPC 50.96 (3) (b) 7. (Note) is repealed.

4 **SECTION 214.** ATPC 50.96 (3) (b) 8. is created to read:

5 ATPC 50.96 (3) (b) 8. NRCS technical guide lined waterway or outlet standard 468

6 (January, 2013).

7 **SECTION 215.** ATPC 50.97 (3) (a) is amended to read:

8 ATPC 50.97 (3) (a) NRCS technical guide water well decommissioning standard 351

9 (~~May, 2008~~)(June, 2011).

10 **SECTION 216.** ATPC 50.97 (3) (b) (Note) is repealed.

11 **SECTION 217.** ATPC 50.98 (3) (a) (Note) is repealed.

12 **SECTION 218.** Ch. ATPC 50, Appendices A to G are repealed.

13 **SECTION 219. EFFECTIVE DATE AND INITIAL APPLICABILITY.** (1) Except as provided in
14 sub. (2), this rule takes effect on the first day of the month following publication in the
15 Wisconsin administrative register, as provided under s. 227.22 (2) (intro.).

16 (2) This rule first applies to small businesses as defined in s. 227.114 (1), Stats., on the
17 first day of the third month commencing after the rule publication date, as required by s. 227.22
18 (2) (e), Stats.

Dated this _____ day of _____, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

